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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE ACT

TUESDAY, JANUARY 24, 1983⁴

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F., (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division

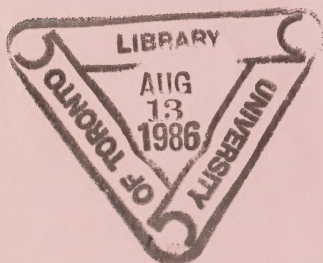
Perkins, C., Counsel, Policy Development Division

Witnesses:

From the Canadian Bar Association--Ontario:

Davis, R., Chairman, Family Law Section

Gotlib, L., President



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 24, 1984

The committee met at 10:13 a.m. in room 1.

COURTS OF JUSTICE ACT

Consideration of Bill 100, an Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: The meeting will come to order. I see a quorum. We will start consideration of Bill 100, Courts of Justice Act, 1983, which received second reading and was referred to the standing committee on administration of justice on November 29, 1983.

Before I call on the Attorney General and the opposition critics to make any opening statements, I would remind members that I asked them to be prepared to discuss a question relating to our loan and trust review to be considered after the Canadian Bar Association's presentation this morning. That is the question of whether we will require expert research and/or report writing assistance during that review.

I also think we should discuss at that time when we will add extra time if we have not completed clause-by-clause consideration by Thursday afternoon. I believe the members should know in advance if they might have to return Thursday evening or Friday morning to complete consideration of the bill this week.

I would ask the Attorney General if he has any opening remarks.

Hon. Mr. McMurtry: Mr. Chairman and colleagues, in view of the fact there was a fairly lengthy opening statement on introduction of this legislation, I will try to keep my remarks at this stage fairly brief.

I think, as all members know, this legislation has probably been the product of more consultation, certainly as much consultation--I am thinking, of course, of our important Family Law Reform Act in which there was also a considerable amount of consultation. The period of consultation with the profession, the judiciary and the public has gone on over a prolonged period of time. I state this and emphasize this at the outset because one must recognize--and we will be more aware of this as we hear some of the submissions that are made--that a total consensus, while desirable, was never really thought to be possible. Some people may even argue it is not necessarily desirable if we are going to maintain the healthy adversarial dimensions of the legal profession.

In any event, the history of this particular project is something I am very familiar with. It was one of my first initiatives as the Attorney General of Ontario to appoint Mr. Walter Williston back in November 1975 to chair the Civil Procedure Revision Committee to revise the rules of practice, and the senior master, Mr. A. F. Rodger, was named vice-chairman of that committee. I noted at the time that the last major revision, as I recall it, took place under Mr. Justice Middleton in about 1911.

In any event, the committee, under the distinguished chairmanship of Mr. Williston, who many will recall was one of our most distinguished lawyers and a great expert in matters of rules of procedure, spent a good deal of time reviewing the rules of other jurisdictions, contacting interested groups inside and outside the legal profession, of course, and meeting with members of the bar and judiciary, and he issued a draft set of rules for comment. It actually was not until 1980 that the report of the Williston committee came forward, as I recall, recommending new rules and a revised Judicature Act.

Since then a subcommittee under Mr. Justice John Morden of the Ontario Court of Appeal has been working up until this time to prepare a new set of rules, which will be passed pursuant to this legislation. On March 31, 1983, the first draft of the Courts of Justice Act was published. On June 28, 1983, a second draft of the act was published, and drafts were sent to the Canadian Bar Association, the judiciary, interested members of the legal profession and the public.

There are a number of major features of this Courts of Justice Act, as you undoubtedly have noted. Fundamentally, it modernizes and consolidates legislation establishing the courts; it replaces numerous statutes, some of which date back to Confederation; and it is, of course, intended to ensure consistency and completeness.

A number of important issues are dealt with, and I will not attempt to enumerate all of them at this time, other than to note that judicial independence is one feature of the legislation in so far as it relates to our provincial judiciary; after the legislation is passed, judges will be able to be removed only by the Legislature. It involves the implementation of the Gale report on the operation of the Judicial Council for Provincial Judges and includes changes made last year concerning post-retirement appointments and also concerning the role of the Ontario Provincial Courts Committee in making recommendations in relation to compensation.

It deals with the official languages of the courts and recognizes what has been the reality in relation to the use of French in our courts during the past five years. There will also be some housekeeping amendments in this regard. I think the name of the county court will be changed to the district court of Ontario, and this is the request of the county court bench. The new jurisdiction will be \$25,000.

10:20 a.m.

I expect that one of the two principal issues that will be dealt with before the standing committee is the issue of the merger of the courts, that is, the merger of the Supreme Court and the county courts into one court, which will perhaps be called the Superior Court, as has happened in other jurisdictions. I have to say--and I will have more to say later--this is an issue which I have certainly agonized over during the more than eight years that I have had the privilege to serve as the Attorney General. It was only after a considerable degree of thought and consultation that it was deemed, in our view, to be in the best interest not to merge the county court and the Supreme Court.

Another very difficult issue is what we describe as the appeal routes. Our proposal is that cases involving \$25,000 or less will be dealt with in the first instance by the Divisional Court, with an appeal to the Court of Appeal only by leave. This is an issue about which it has been impossible to obtain any real consensus in the profession. We will hear from the Canadian Bar Association this morning opposing this particular appeal route in so far as the monetary jurisdiction is concerned, whereas later on we will hear some support for the proposal from the Advocates' Society, which, as you know, is made up of lawyers who specialize in advocacy before our courts and our tribunals. Also, the issue of the creation of an intermediate court of appeal is tied up in this whole issue of appeal routes.

We have a series of amendments that we wish to make, which we had hoped to have available today. They will be available tomorrow. Most of them are really of a technical housekeeping nature. I hope we will have an opportunity to move ahead with these amendments on Thursday afternoon.

I believe the legal profession, while not agreeing totally with respect to all features of the legislation, as I have already indicated, does agree that there is some degree of urgency, or at least there is a broad consensus that there is some degree of urgency in relation to passing this legislation, because after it has been passed there will be a period of education required within the ranks of the profession before the legislation and the new rules can be proclaimed, given the fact that the period of gestation, as it were, has been very long--

Mr. Elston: Slightly longer than that of an elephant, I think.

Hon. Mr. McMurtry: --and all who have worked on this legislation, not just within the ministry but within the profession and the judiciary, are anxiously awaiting the passage of what really has to be regarded as major legislation in so far as the administration of justice in this province is concerned.

Mr. Breithaupt: Mr. Chairman, my remarks will be brief at this time. Late last December I welcomed the opportunity to make a suggestion to the Attorney General and, with the support of the member for Riverdale (Mr. Renwick), we were able to have a short second reading debate on Bill 100, which allowed us to be at the stage we are at now.

If the bill is dealt with in committee fairly expeditiously, as I expect it will be this week, I hope we will then have the opportunity to have the bill called for third reading immediately upon the beginning of the session in March and the timetable will likely be in place, as the Attorney General had hoped it would be.

I recognize that there had been a desire to have this bill in place with all of its details completed as of January 1, 1984, but of course that would simply have been impossible. If the rules are prepared and will follow the completion of this week's hearings and the results that will flow from them, we should be in a position as of perhaps July 1 of this year to have the system in place and thereby not occasion severe or serious delay beyond what is necessary for us to do our job.

The Attorney General, on introducing the bill in October, made a statement, with which I believe members are familiar, and it was referred to in debate on second reading. It is interesting that the only area the press seemed to have been concerned about in this bill was the matter of the openness of the courts, at least as they saw the matters defined. We have seen a number of editorials on that subject, along with the Attorney General's reply.

I presume that when we deal with the sections to which that is more particularly relevant we will have the opportunity to clarify just what is happening. I would welcome the Attorney General at that point placing on the record of the committee the letter he sent to the editor of the Toronto Star on November 24, which sets out in a somewhat different view the concerns he has and which I believe answered a number of the comments that have been raised not only by that editorial, but ones which appeared in Ottawa and in North Bay, among other communities.

We have a number of witnesses before us who are going to be making comments, as the Attorney General has said, on their views of a different court structure. At this point, I would only regret that we did not have that information some time ago because it is going to be very difficult when we are faced with a piece of legislation that is half an inch thick to be suddenly called upon to completely restructure the system while we are sitting here as though we were looking at it afresh. However, the positions will be placed before the committee and it will certainly be useful to hear those views. If, in some manner or some part, they can be accommodated, that is just fine.

I have no further comments to make other than to welcome this opportunity to have the bill proceed in the pattern that we are doing because I think we would have lost half a year or so further if we had not been able to get agreement to a quick second reading and a reference to this committee.

Perhaps it is in some ways interesting to see that this piece of legislation happens to be Bill 100. I do not expect that we will see this kind of legislation before us probably for another 100 years, much less in this forum, but there have been many changes.

Certainly, the work of the late Walter Williston, QC, is well known, particularly to the lawyers on the committee, and the work that has followed through the variety of groups that have been interested is a credit I think to the legal profession and to those involved in the administration of justice in that so many people would take so much time to attempt to sort out our system so that it is in place to face whatever the next 20 or 30 years may bring.

10:30 a.m.

We are not likely to see professional style of legislation like this before us very often. It is happening now with the engineers and architects bills which we will have next week. It has happened with securities legislation that the Ministry of Consumer and Commercial Relations has put through over these last several years. But these reworkings of professional relationships and particular institutions within our province come forward rather rarely. When they do, they deserve our attention and our attempt to balance up other interest which may not have been considered in the drafting of the legislation, or indeed to acknowledge that an item that is before us may not necessarily be what one group or another would think they would like in the best of all possible worlds.

We had that requirement to an intelligent compromise in a variety of these themes. We also had the requirement to allow delegations and encourage individuals to be heard because the results of that kind of input invariably brings us better legislation.

I am pleased that this is before us today. I hope we can proceed with the first presentation and will be able to complete our tasks in good order this week.

Mr. Chairman: Mr. Renwick?

Mr. Renwick: I have no comment, Mr. Chairman. My colleague the member for Nickel Belt, who has been studying this matter, may have a comment.

Mr. Laughren: As a matter of fact, I have spent too many weekends studying this, Mr. Chairman, but I will hold my remarks until later.

CANADIAN BAR ASSOCIATION--ONTARIO

Mr. Chairman: With that, we will proceed with the Canadian Bar Association--Ontario ; Miss Lorraine Gotlib, QC, president, and Ross Davis, chairman, family law section. Would the committee members turn to exhibit 1, which was previously distributed?

Miss Gotlib: Mr. Chairman, Mr. Attorney General, gentlemen, members of the standing committee on administration of justice. My name is Lorraine Gotlib. I am president of the Canadian Bar Association--Ontario and a practising lawyer. With me is Ross Davis, chairman of the family law section of the CBAO, who is also a practising lawyer.

We come to speak to you today about a resolution that has moved through the various levels of our organization and has the full support of our 14,000 voluntary members as a result--lawyers and law students.

The resolution, briefly, reads as follows:

"That the CBAO opposes the adoption of section 14(1)(a) and section 35(2) of the proposed Courts of Justice Act, Bill 100, and requests that they be deleted."

I will ask Mr. Davis to speak to the substantive part of this presentation. However, I would like to preface his remarks by offering some explanation of how any submissions obtain the support of the Canadian Bar Association--Ontario and its members.

The CBAO, the Canadian Bar Association--Ontario, is one of 12 branches of the national organization, the Canadian Bar Association, which comprises some 31,000 members. Ontario, being the most heavily populated province, contains almost half of the membership and is very active indeed. We have some 22 sections, beginning with air law and ending with wills and trusts. In my view, that is where the real activity of the branch takes place: Lawyers get together to study common problems, make proposals for change, study new legislation, complain about old problems and complain about new problems.

The family law section, as you may imagine, is one of our more active sections. It consists of the provincial family law section, which meets chiefly in Metropolitan Toronto, and includes a southwest Ontario region family section. Together, the membership totals some 1,600 active practitioners.

The executive of the family law section first considered this resolution at its meeting on October 25, and it was passed at that level. That was followed by a mailing to the 1,600 members and a members' meeting on November 15, where the resolution was again passed.

At that stage, Mr. Davis, as chairman of the family law section, brought the resolution to the executive committee of the Ontario branch, whose meetings I chair. The executive discussed it and approved the resolution on November 23.

Last but not least, the council of CBAO, which is the governing body and which comprises some 70 persons, discussed the resolution at its meeting on December 7, and it was approved by council on that date.

You can see that the submission before you has gone through all the levels of our organization and has the full support of CBAO.

I now call on Mr. Davis to speak to the resolution.

Mr. Davis: Mr. Chairman, by way of background, I would like to add a few points to Lorraine's comments about the procedure that has been followed in arriving at the submission that is before you today.

The initial discussion draft of the Courts of Justice Act, dated March 31, 1983, was examined by our executive. On May 17, 1983, we wrote to the policy development division of the Ministry of the Attorney General and, in short, said that we thought the bill was commendable. We did have comments with respect to the official guardian's reports, which I will refer to later, but in general the executive felt this bill was well thought out, well researched and a credit to the Attorney General's ministry.

On June 28, 1983, however, a second discussion draft was circulated, and that draft contained an addition that was not in the original discussion draft. The family law bar opposes the concept of diverting some types of appeals in family law cases away from the Court of Appeal and to the Divisional Court. As you are aware, the distinction between appeal routes is going to be determined on the amount of money that is in issue in the case at trial. In my respectful submission, that is an unprecedented move in the legislation of this province and is something that should be avoided, if at all possible.

Hon. Mr. McMurtry: Mr. Chairman, I interject, for the information of members, to say that the resolution of the Canadian Bar Association--Ontario was based on our June draft, and the section numbers are a little different in Bill 100. It is a minor point, but they refer to subsection 14(1), which in the draft was introduced as 15(1), and subsection 35(2), which I guess is 36(2) in the bill that was actually introduced. The comments, quite properly, were made on the earlier draft, but I want to avoid any confusion, because members of the committee are working from the bill that was in the Legislature.

Mr. Mitchell: Would you correct us on the first number? I had a feeling there was a mixup somewhere.

Hon. Mr. McMurtry: The sections the bar association are concerned with are subsection 15(1) and subsection 36(2).

Mr. Davis: Specifically, clause 15(1)(a) and subsection 36(2).

Hon. Mr. McMurtry: Yes.

Mr. Davis: The rationale behind the family law submission is contained in the memorandum that was filed with the committee, but I will briefly review the reasoning with you.

Our members are unable to determine any other statute of general application in which a monetary standard is imposed in determining the route for an appeal. In my submission, the public will undoubtedly see the sections in dispute as creating one law for the rich and one law for the poor. The person with substantial assets who attends in our courts and asks for a decision in a family law or matrimonial case is going to be able to have his case decided on appeal by the highest court of the province, whereas someone who has a case involving less than \$25,000, and maybe as much at issue in principle, is going to be required to proceed through a different route.

Second, the proposal in dispute applies to both county court and Supreme Court. In those cases where the Supreme Court is the court of first instance, the proposal that the Divisional Court hear appeals is going to mean having judges of the same level sitting in appeal of each other, or judges sitting in appeal from the decisions of their brother judges. I do not suggest for a minute that any of our judges are not impartial--I am sure they are impartial--but I do not believe it is sound legislation to provide that judges of the same level of court sit in appeal of their brother judges in any situation. The idea of an appeal is to have a fresh look at a fact situation based on principle, and I submit that a different level of court is appropriate to do the review.

10:40 a.m.

Third, if the proposed amendments are adopted, there will be a divergence in the practice between cases brought under the Family Law Reform Act and those brought under the Divorce Act. I am sure you are aware that the Divorce Act is federal jurisdiction and it provides for appeals in divorce cases directly to the Court of Appeal of the province. It makes no sense to a practitioner to have what are essentially the same problems, divorce and matrimonial cases--it makes no sense to have different courts dealing with the same fact situation.

If the Family Law Reform Act provisions are adopted, the appeals in most cases will go to the Divisional Court, whereas if someone has grounds for divorce, and with the proposed amendments it may be much easier, a divorce case will go to the Court of Appeal, and that should be avoided wherever possible.

Fourth, while the Court of Appeal could still grant leave for an appeal from a decision of the Divisional Court, the addition of two steps will prolong the obtaining of a final determination and will add to costs. In family law matters more so than in other cases, access to a final resolution of litigation within a reasonable time is essential. Delay in reaching a conclusion to family law litigation postpones the beginning of an often lengthy adjustment required by separated spouses unable to negotiate satisfactory settlements.

I would point out as an aside that as well, with the extra steps involved in moving from the Divisional Court to the Court of Appeal, it may be that those spouses who are most entrenched and most difficult to deal with will be the ones who will take advantage of this extra step. You may have the more difficult litigants creating a greater backlog in the courts by taking advantage of the two-step procedure required after the Divisional Court decision.

Fifth, according to our information, the backlog in the Court of Appeal dictates an average wait of three months from the date of an appeal. The court official with whom we were in contact estimates that the current wait in Divisional Court is six months. In diverting the appeals away from the Court of Appeal and to the Divisional Court, the inevitable result will be to increase the waiting time in an already overburdened court. As I say again, the

person we were in touch with estimated that 45 to 50 cases a month could be added to the Divisional Court list. With an already six-month delay, the bar feels that current delay, as it will be exacerbated by the proposal, is simply to be avoided wherever possible.

Sixth, the bulk of the litigants in this province would not qualify for a direct appeal to the Court of Appeal. In view of the fact that the monetary restrictions involve \$25,000 or more, it is submitted that there are not too many families that will reach that threshold. Family law is an important aspect of the law of this province and, certainly to the practising bar in our area, the most important area. There are cases involving serious principles of general application in cases where less than \$25,000 is involved. It may be that there are even more cases of principle in those situations.

The adoption of the sections proposed in effect will deprive the majority of the citizens of this province of what they currently have, which is direct access to the Court of Appeal in matters involving principle. In my submission, the Court of Appeal should be dealing essentially with matters of principle; not with matters that were in the discretion of the trial judge but with matters that affect most of the individuals in this province.

Lastly on this point, it has been said that the Court of Appeal has expressed its displeasure in having to deal with matters of family law where the litigants are perhaps losing sight of principle and dealing with the litigation on an emotional or a too emotional basis. Although this point is perhaps of surmise, the courts have at their disposal a method of dealing with appeals that are not meritorious.

In a case called Harrington v. Harrington, the Court of Appeal gave a signal to the practising bar which should, in my submission, discourage anything frivolous by way of an appeal. In that case, Mr. Justice Morden said:

"In appeals on quantum of maintenance, it seems to me that general practicality and fairness require an appellant to show some material error in the reasoning of the trial judge before an appellant court can interfere. This approach applies with particular force in a case--and this is not one--where the only issue is the amount of entitlement."

On that point, in my submission, the courts have the ability to control the types of cases that come before them by simply indicating to counsel that unless a matter of principle is raised in the appeal, their submissions will be given short shrift.

If the concern is overburdening the courts, in my submission the answer to that is for the judges to take what I believe to be their current position and insist on being shown, within a very short period time after an appeal is started, just what point in principle brings the appellant to the Court of Appeal. If he cannot show that, then he should be let go as quickly as possible.

In summation, in my submission the proposed amendments are

not of any benefit to either the public of this province or to the practising bar. Simply leaving the situation as it was prior to their proposal in the original discussion draft would, in my submission, enhance the administration of justice in this province and be generally supported by the practising bar.

I did also want to address you on a matter that is not contained in the brief I have filed but is again dealt with in the proposed Courts of Justice Act. I am referring specifically to section 126.

Section 126 requires that the official guardian's office prepares a report in every case in which mention is made in a divorce petition of children who are under the age of 18 years. This is a matter that the bar has taken a position on before, as some of you will be aware. Other members may not be aware of it.

The Canadian Bar Association passed a resolution on April 27, 1983, which was forwarded to the minister and acknowledged by him, opposing the automatic involvement of the official guardian in uncontested cases. In view of the fact that the section which was then being discussed in the discussion draft has now been incorporated in the bill, the bar association reiterates its objection to the proposal that there be automatic official guardian's reports.

By way of history, the bar association struck a special committee in 1981 to deal with Bill 125, the Children's Law Reform Act. In their brief to this committee, which was attended by myself, dated January 11, 1982, they urged that the official guardian's reports not be automatically required, as was then the case in that particular draft.

As I understand it, the Attorney General's ministry removed the clause from the Children's Law Reform Act but left it in the Matrimonial Causes Act and has now incorporated it in the Courts of Justice Act. So while I suppose the brief was successful in having that clause removed from the Children's Law Reform Act, it certainly seems to be still the position of the government that it wishes to have automatic official guardian's reports in all cases where children are mentioned in the petition.

In the brief in 1982, the author says as follows:

"It is our feeling that although the office of the official guardian plays a vital and valuable role in this province, the current rules relating to the production of official guardian's reports creates an excessive economic burden on the public.

"At present, the involvement of the official guardian is required in all divorce and annulment actions in which there are children under the age of 16, even if in those actions there are no claims made with respect to the children. This causes an investigation and report to be made, the cost of which is not totally borne by the litigants, especially in legal aid cases, and causes undue delay in the action.

"We also feel that the official guardian's reports, as

presently constituted, do not meet the needs of the court or of the parties. Our view is that they contain too much opinion material and insufficient fact-finding."

10:50 a.m.

For the purpose of this bill, I do not believe we would be within our bounds to deal with the content of reports in contested cases, but I do submit that the automatic requirement in uncontested cases is something this committee can take a look at.

On April 27, 1983, the Canadian Bar Association council passed the following resolution:

"Resolved that service of the petition for divorce on the office of the official guardian be required only where the respondent files an answer or counterpetition disputing custody, maintenance, access or education of the children of the marriage."

There was a second portion of the resolution that dealt with directing the family law section to discuss the matter with the official guardian's office and to try to reach a consensus.

Our executive, before passing that resolution, first at the executive level of the section, then at the section level and ultimately at council, conducted an informal survey among petitioners in Toronto and other areas to try to ascertain whether what I believe to be a generally held view in the profession was sustained by an actual case history. The profession, I would think it safe to say, feel that in uncontested cases the requirement of a report really is a waste of the public's money and of their clients' money, and it certainly delays the action coming to trial.

The executive asked a number of practitioners to pull each of the cases they had on hand on a particular day, to take a look at the reports and to try to answer whether or not the reports that were obtained added anything to the proceedings. I believe we were trying to determine whether the official guardian's reports came up with relevant information that was not in the petitioner's hands at the time the petition was presented.

The 1983 reports were looked at. I do not suggest that this is in an enormous sample, but in all but one case the practitioners felt that no useful information had been added in those uncontested cases where a report had been delivered. In one case intervening events had brought the child in question to the attention of the juvenile authorities, so under the terms of our involvement we had to say that it did in fact bring information before the court that was not initially there, but part of the reason in that case was that events had intervened.

After discussion in the executive and before the council we also conducted an informal survey of county court judges in the province to ask whether they felt the report was of use to them. We distributed the survey to 161 county court judges; of those, 102 responded and some gave their comments. This information has been previously given to the Attorney General's department, but

again I do not know whether the members are aware of this questionnaire.

In uncontested cases only six per cent of the judges surveyed were able to say that the official guardian's report was of significance to them in a significant number of cases. In my submission, if the judges do not find them useful, except for six per cent of them, we really have to take a look at a different type of approach in dealing with the issue of an independent view of what is to happen for children on separation and divorce.

There is no necessary connection, in my submission, between the fact of divorce proceedings and the need for the involvement of an outside agency. It may be in many cases that divorce follows many years after the separation. It may be that the trauma and the difficulty have been put behind three years before the issuance of the divorce petition. What useful service does the official guardian's office produce in coming along three years after the event and inquiring about the children?

When the official guardian's office was initially created in the 1950s, I do not believe anyone would have argued that it was not a necessary and a valuable assistant in determining what was in the best interests of children at the time the parties separated. But in the 30-odd years since then we have seen a proliferation of social service agencies.

There are now social workers in schools. The facilities available to children and their parents are much improved over what they were in the 1950s. In my submission, the need for the official guardian's involvement, especially in cases where there is no contest over the arrangements to be made for the children, simply cannot be supported.

The official guardian's office has, in the recent past, embarked on a program of child representation, partially as a result of the permission for child representation contained in the Children's Law Reform Act. In the opinion of the practising bar, that is the area in which the official guardian's office can be most useful.

The office has provided independent and sensitive lawyers to deal with children who are caught in the middle of the dispute between their parents, over which they have no control. In that area they provide an extremely useful service.

The difficulty that the practising bar sees is that the resources of this rather large office are being wasted on the processing of questionnaires from spouses who do not have problems, and who do not have any difficulty with each other. The result of it is a short report saying that the official guardian has investigated the situation and there is nothing to say. All of that takes time. It certainly takes money.

The official guardian's office is a rather large organization, as I say, down on Dundas Street West. I understand it employs a large number of social workers to take a look at these various questionnaires and decide whether the office should

become further involved. In our experience, where the case is not contested, they simply take no further steps.

This is logical if you think about it. If both parents feel the existing arrangement is the best they can manage, then, obviously, they are not going to raise an issue about it. If no one is complaining then, in my submission, the official guardian should simply not be involved. Other agencies are available, and other resources can be brought to bear where there are problems. To connect it with the bringing of a divorce petition in this day and age is not logical, in my submission.

A number of proposals have been advanced, none of which, I would say, have met with any formal approval by any of the authorities involved. The aim of discovering those cases in which there are problems is the focus, I submit, the official guardian's office should take. They would be able to achieve that end if you were to require the petitioner to state, certify or swear in the petition that there are no problems, and that the arrangements that have been made for the children are considered, in the opinion of the petitioner, to be adequate and the best that can be obtained in the circumstances.

If you put in the same petition a notice in big, black letters, "Notice to respondent: If you disagree with any of the claims that are made in this petition, or if you feel that the arrangements for children are not adequate or some further investigation is needed, you may file with the official guardian's office a request that they become involved." In that way you get rid of all the cases in which there is no need for the official guardian's involvement, and you enhance the time available to take a look at the cases where there may be problems.

It may also be that such a proposal would save the legal aid plan an enormous amount of money. All the legal aid divorces are under the same rules, of course, and every petitioner is required to pay \$78.25, I think it is now, to the official guardian's office for the purpose of preparing the report. I do not believe that covers the cost, but in any event a certain amount of money has to be paid up front, as it were.

11 a.m.

The legal aid plan gives out a voucher which, I suspect, is used for accounting purposes back and forth. But all the legal aid cases that are uncontested or in which there are no arguments over child custody or access cost the legal aid plan, I suspect, a substantial amount of money.

If the rule were that the respondent is to invoke the involvement of the official guardian's office and pay the required fee, then only in those cases where there was thought to be a problem would the legal aid plan have to shell out any money. Only in those cases where there were problems in private cases would the respondent have to come up with any money.

One other proposal was that perhaps the existing questionnaire could be sent and served on the respondent so that

all the information that is now sought to be obtained from respondents would be given to the individual in one package. Again, if the respondent felt there was a problem with respect to child custody, he could file the questionnaire and start the process moving.

I point out in passing that the Advocates' Society has taken exactly the same position as the Canadian Bar Association on this point. In their opinion, the automatic requirement for an official guardian's report is no longer of any use. "Your committee recommends that the report be able to be waived by the written consent of both spouses, or an order of the judge, but that the reports be preserved in cases where either party wanted one or in contested cases."

On those two points I submit that this committee should seriously consider whether sections 15 and 36 should be included in the act, and I strongly urge that section 126 be revamped to provide that the official guardian be involved only in those cases where custody or access are contested.

Unless I can be of any assistance, those are my submissions.

Mr. Chairman: Thank you, Mr. Davis. Mr. MacQuarrie, I believe you have a question.

Mr. MacQuarrie: Yes. Mr. Davis, I have a constituent who could not agree with you more as far as the official guardian's questionnaires are concerned.

In this instance, the couple have been separated for something in the order of five years. She had the only child of the marriage, a daughter, and custody was not an issue. She got a questionnaire from the official guardian asking her to describe the quality of the neighbourhood they live in, and all the rest of it. She phoned me feeling very highly insulted over all this.

You can see how it can go to ridiculous extremes. At the same time, in a divorce action children of a marriage are very important individuals and, somehow or another, they have to be protected.

I can think of another instance where neither the father nor the mother in the separation were particularly interested in the children. Both of them were professionals going their own way and very busy making lives for themselves and the children came second.

Having followed the children in that instance over some years and seeing the problems they had, I would be inclined to think that, as in some of the steps that have already been taken in the Children's Law Reform Act and the rest, the welfare and interests of children have to be covered somehow, whether or not there is a custody contest. Otherwise, they could end up in an environment that is totally unsuitable for them and, rather than developing to their full potential, could find themselves in all sorts of difficult situations.

I could give you chapter and verse on that if you want, but suffice it to say something has to be done to save the interests of the children in divorce actions, regardless of the custody issue. The court should be able to ascertain whether either of the parents are suitable to keep the children or whether some other interested member of the family might step in and look after them.

In my experience, the only ones who really suffer in the divorce action can be the children. We should not go on blithely saying, "Let us disregard the OG's report," even in instances where custody is not an issue.

Notwithstanding my constituent's strong feeling that this was a waste of time, effort, postage and all the rest of it, and that the Attorney General (Mr. McMurtry)--I would not like to say what she said about the AG.

Hon. Mr. McMurtry: She was mixing up the OG with the AG.

Mr. MacQuarrie: In any event, that is the sort of situation that we come across.

Mr. Davis: Mr. MacQuarrie, I do not deny for an instant that the child has to be the most important consideration in either a separation case or a divorce case. I do not know that the current procedure is going to catch each and every problem that now exists. The proposal does not worsen the situation one iota.

In order to find all of the cases where neither party really wants to deal with the children, you have to have a face-to-face interview with these people. Currently, the official guardian sends out a questionnaire. It asks what the arrangements are, are the children happy and healthy--

Mr. MacQuarrie: Are you living with someone?

Mr. Davis: That is sort of common today.

Mr. MacQuarrie: Some church-going ladies take offence at that.

Mr. Davis: Let us assume that you have two parents who do not have the interests of their children in mind. They can, I would assume, phoney up the questionnaire in a way sufficient to get by a social worker. All they have to say is, "Everything is fine." The other spouse files another questionnaire and says, "Everything is fine." The official guardian's office matches the two of them up and says, "Okay, I will not investigate."

The problems you are talking about where neither is interested are, first, in my experience, a very tiny portion of the family situations in this province. When this came up, our office had a discussion about whether we had ever found one. We can remember two, in the 10 years or so that we have been doing this practice, where we thought maybe neither was interested in the children. In the ultimate event, there was a resolution of the problem and the difficulty was worked out.

First, you are dealing with a tiny minority and this amendment is not going to worsen the situation. In fact, it is going to benefit the vast majority of people who do have the interests of their children--

Mr. MacQuarrie: I will concede that it is a minority but there is another aspect to it. That is, quite often in a case where custody is agreed on between parents, the parent who is the less suitable of the two is the one who ends up with custody.

Mr. Davis: You would have to be taking the position of the judge in that case.

Mr. MacQuarrie: This is where I think the questionnaire that is currently being used might not be adequate. I am not arguing that point right now. All I am saying is that something should be done to ensure to the fullest possible extent that the interests of the children in this type of dispute are looked after.

Mr. Davis: In my submission, perhaps some publicity to encourage the child himself to contact the official guardian's office would be useful. If you are talking about a very serious case where the child is not being looked after and is of sufficient age to understand the process, that is what the official guardian's office is for.

In my experience, I have actually been called by the child of one of the people I represent to give some advice as to where he or she could go to get some independent advice. It was obviously an older child who really wanted to deal with the problem on his or her own. That is where the official guardian's office was terribly helpful.

Dealing with your concern about the inadequate or less suitable parent getting custody, I do not know that this is a widespread phenomenon. It may be your opinion that in certain situations you have seen you would have preferred one parent over the other, but a custody case gets into all the nitty-gritty and details that might not otherwise be known.

If the parent whom you consider more adequate did not contest the case, then how can you say that he or she is the better parent to have custody?

In cases where you are dealing with children, I submit it is a first requirement that the parent want custody. It may be that the parent says, "I am much better than she is and I can provide much better for this child," and that is a little bit of a smokescreen. If that person contests, and the courts deal equally with husbands and wives, mothers and fathers, I do not see how the official guardian's involvement is going to get at that process through this legislation. Perhaps to enhance his role as being independent and available to children will be the best route.

11:10 a.m.

Mr. MacQuarrie: I was not talking really about a full-blown custody fight. I was talking about a situation where one parent, for some reason, backs away and leaves custody with the parent who might be the less suitable of the two.

The other thing I am thinking about is the situation where there is no real dispute as to custody, where it is not even mentioned, and the children are just left to stay with the parent with whom they are residing and it is not particularly covered off. I wanted to see what you would suggest in so far as making sure that the interests of the children in every case of matrimonial breakdown--divorce, separation and the rest--were looked after.

Mr. Davis: My recommendation would be that you would start out by assuming that the other parent, the responding parent, is the primary source of that information and you put that person on notice. Second, you would perhaps ensure that anyone, including yourself, who had an interest in a particular case could begin an investigation by the official guardian's office.

If you assume that the information has to be in someone's hands, then you make a route available so that someone can get to the proper office, which is the official guardian's office. That, in my submission, would protect as best as possible the interests of children. If you give a route to the person who has the information to get the matter before the proper authorities, I believe you have done the best that can be expected.

Mr. MacQuarrie: What about other routes for the child--older brothers or sisters who might be of age to look after them, grandparents, uncles, aunts, this sort of thing? The new federal legislation, as I understand it, that recently has come forward indicates that custody is not going to be quite the black and white situation it has been.

Mr. Davis: I have taken a look at the bill and I believe it does not make any substantial changes in that area. It has always been my opinion that a court can do whatever is best for a child, whether it involves taking him away from parents or putting him in the care of grandparents or an aunt and uncle. The common law has developed to the point where if a judge feels someone other than a parent should have custody, then that is the way it is going to be. It may be that by giving it some legislative recognition that principle is being more formally recognized, but I do not believe it has changed things in any great degree.

Mr. MacQuarrie: Assuming that the official guardian was still going to be involved in these situations, how do you see his role being strengthened in the interests of protecting the children?

Mr. Davis: The division of his office that now deals with independent child representation is, in my submission, the best thing that office has had going for a long time. That needs encouragement and strengthening and perhaps publicity--the idea of

making it known to the public that the office exists to deal with those types of problems. That would be the primary way to deal with the question of strengthening the official guardian's office.

I understand from my discussions with some members of the Attorney General's staff that the funding of that could be from the loss of having to do automatic reports. I understand, though, that any money saved goes back into consolidated revenue so you cannot just shift it over like that. That, to a layman, makes sense. Just take the money away from the floor of social workers who are processing paper and employ them in a productive capacity, perhaps to assist the lawyers in the other branch to conduct the necessary interviews and to help them bring a social work focus to the problem and expand the visibility of the official guardian's office in the role that it is trained to do.

Mr. MacQuarrie: Thank you.

Mr. Renwick: Since Mr MacQuarrie raised the question of section 126, the comments I have to make or the questions I have to ask will start with that section. I take it your presentation on section 126 relates fundamentally to concern about the quality of the official guardian's reports.

Mr. Davis: It relates to two aspects: the usefulness or effectiveness of the reports in one respect and also the quality of the longer reports. I do not believe for the purpose of this presentation that we should deal at any great length with criticisms over the longer reports. That is not something legislation is necessarily going to change, and I think the idea of the report is good.

But when you get in an uncontested case a one-page report that says there are no problems relating to custody and access, and the lawyer who prepared the petition knows that is exactly the case because the custody has been undisputed for three years or more, I am concerned about the need for that kind of involvement in this day and age.

Mr. Renwick: Is your response to my question that it is not a question of the quality of the report, that the report, regardless of its quality, is irrelevant?

Mr. Davis: Certainly, the short reports are irrelevant. If there are cases in which the official guardian's office comes up with information in uncontested cases, they would be relevant, but in our experience they just do not happen.

Mr. Renwick: I believe I could make a fairly effective submission that it is part of the inherent jurisdiction of a court to be interested in the care and welfare of children. I find it difficult to accept the proposition that the official guardian's report, which is in a sense the method by which that inherent jurisdiction comes before the court, should be eliminated. Would you agree it is in the inherent jurisdiction of the court to be responsible for the care and welfare of children?

Mr. Davis: Yes.

Mr. Breithaupt: How else will the court know?

Mr. Renwick: If I could just continue, Mr. Breithaupt, if the care and welfare of the children is a matter of the inherent jurisdiction of the court, and we were to agree with your submission and eliminate the official guardian's report, what position is the judge going to take in the court? What questions is he going to ask? What requirement is he going to impose? Is he going to accept the basis of your submission that since the parties to the action are not contesting any matter, therefore, he has no interest to participate in that question?

Mr. Davis: I do not think you can take away from the judiciary the right to take a look at any particular situation, but in the bulk of cases, if there is a problem, the parties themselves will have raised it and that will twig the judge to the fact there is a problem. If the higher profile of the official guardian's office suggestion is adopted, then there may be other people who will involve the official guardian's office where there is a problem.

I go back to what I said to Mr. MacQuarrie. The only ones that slip through the net are the ones that slip through the net now, the ones who presumably have concocted a story and say there are no problems, and whose spouses are involved in the concoction and go along with it. Those people slip through the net now and under this proposal they would slip through as well. In my submission, I do not believe there is a large number of those types of people. I do not believe the current arrangement catches them in any event.

If one parent or the other is dissatisfied in any way with the arrangements, not necessarily just custody but if they are not happy about the schooling arrangements or the after-school tutoring or the religious education or any of those factors, the proposal we make would say to them, "You have a right to raise this issue."

11:20 a.m.

How far does the government go to make people raise issues? Mr. MacQuarrie said he was not very happy about some custody arrangement he saw. How far do you go in having somebody else push that issue and involve the official guardian's office? I think you can have them make an investigation, but it just does not happen that way, in my experience, that people bury these issues under the rug.

Mr. Renwick: Assuming for the moment the quality of the report, because that is essential to the success of any such system, if one assumes that efforts are being or will be made to make certain the quality of those reports is effective, then I find it difficult to adopt your argument about slipping through the net or how far the court should go to intrude on questions of the welfare of the children. I do not accept that view, but I

certainly recognize that in a large number of cases in all likelihood there is a mutual interest in what does happen to the children in divorce actions. It may be there would be some merit in providing for an application to the court to waive the requirement of the report, if that made sense.

It would be interesting to know what the judges would say on such an application, particularly in the light of your statistics that they do not consider them to be much help anyway. I do not want to labour it. I would have difficulty agreeing to the automatic elimination of the official guardian's report. I would not have significant difficulty, if it was a reasonable practice--I am not speaking with great knowledge about these matters--that on application to the court, the report could be dispensed with. That might have some merit.

In other words, it would mean counsel for each party would have, in a sense, to take responsibility for letting the court know that in this case they were there to state that a report was not necessary. Professional responsibility in that sense might be a useful provision. Apart from that, at the moment I cannot see my way to accept the full-blown recommendation of eliminating the need for the official guardian's report in uncontested matters.

Mr. Davis: Are you aware, Mr. Renwick, that the Children's Law Reform Act provides that a judge may order an investigation by the official guardian's office, and that is the way it is dealt with in provincial legislation at that stage?

Mr. Renwick: Yes, I am aware of that.

Mr. Davis: I put the argument to you, if it is a provincial case, which is closer to the moment of separation where you assume the trauma or the difficulty is going to arise, if it was good enough for the province in that situation to order that the official guardian be involved if the judge felt it necessary, why would the same argument not apply in a divorce case, which may be further removed from the actual difficulty?

I stand by my submission that I do not believe it is necessary, but if in the opinion of this committee it was the only movement that was available, that you would provide for an application to dispense with those reports, I suppose it is something to think about. It might add just as much cost to the proceeding as going ahead with the official guardian's report, which would require a motion, presumably, and an attendance before a judge. You could not build it into the ultimate hearing very successfully, or perhaps you could. You might say the application could be brought on the day the divorce is to be heard, and if counsel satisfies the judge at that time that no report is necessary, then the dispensation can be granted on the date the hearing proceeds. I have not given it much thought, but it is a possibility.

Mr. Spensieri: If you do not get a dispensation, you have to adjourn, though.

Mr. Davis: You have to go back. That is a penalty. Then counsel is going to have to make a good assessment of whether he feels this is something that is going to work, and the penalty for guessing wrong is going back to square one.

Mr. Renwick: I have another question with respect to the initial presentation. If any other colleagues want to deal with section 126, it might make sense to deal with it that way.

My only question on the proposals with respect to subsections 15(1) and 35(2) is to ask you for the basis of the statistical information in your fifth submission about the extent of the backlogs in the Court of Appeal and in the Divisional Court. If that information is available, of general interest to me in looking at this bill is what it does with respect to the efficiency compatible with justice in the courts. Do you have statistical information supporting that statement about the backlog?

Mr. Davis: That is based on a conversation I had with Mr. Bridges, the registrar of the Divisional Court. It was never written down, but I asked him if he would tell me what the wait was in the respective courts and whether there had been any discussion about what the amendment might do.

Mr. Renwick: My problem when I see those statements is that I never know quite what the definition of "backlog" is and what "current wait" means. I was just asking whether you had any specific written statistical information about that.

Mr. Davis: I believe that statistics are compiled on a monthly basis. Whether they address that specific problem or not I frankly do not know.

Mr. Chairman: Are there any further questions of the witnesses by any members of the committee?

Hon. Mr. McMurtry: Mr. Chairman, I have some comments. I would like to thank the distinguished representatives of the Canadian Bar Association for appearing and particularly for the broad support they have given to this important legislation. I appreciate the work they have done on it and their general support and enthusiasm for the legislation. I think I do understand the issues they have raised, I can appreciate their concerns and I would just like to deal with them fairly briefly.

On the matter of the official guardian's report, although the section of the legislation is there, I think it is known by the association to be under very active review at the present time. The bar association has made a study, as has been mentioned, and this ministry has made a study. The issues have been articulated very well this morning by members of the committee as well as by representatives of the Canadian Bar Association. Certainly, for us to make any change, we would have to have a very full discussion, given the important history in relation to the official guardian's report. I assume that the official guardian would like to be heard from, as he has some very strong views in this area.

I would like to underline for the members of the association the importance of the active discussions that are taking place, because we do recognize the legitimacy of some of the concerns. On the other hand, we also recognize that there are a certain number of children who are affected by the official guardian's report in undisputed cases. These may be a fairly small number in relation to the overall number of reports; I do not quarrel with that. But, again, it becomes a judgement call at what point a relatively small number of children warrant the overall apparatus remaining in place.

11:30 a.m.

I certainly do not pretend to have the wisdom to address this subject, but it is an issue that has to be dealt with. We are dealing with it and we will, of course, be continuing our consultation, particularly with the family law section of the Ontario branch of the Canadian Bar Association, which I might say has certainly provided a great deal of assistance to the ministry and the government over the years.

Our interaction, our consultation with the family law section in particular of the Canadian Bar Association, has been a very important feature of some of the important reform legislation that has been introduced. I think this interaction between the private practising bar and the Legislature, and more particularly the Ministry of the Attorney General than the Legislature generally, is important.

I would like to take this opportunity to thank them and congratulate them for their effective involvement in the past. I certainly recognize it as a very important relationship. I know future Attorneys General will benefit, as I have, from this important relationship.

I would like to discuss briefly the issue of the appeal routes and perhaps ask one or two questions myself. I want to state at the outset that this is an issue that has been of great concern to me personally, and certainly it is an issue about which I feel personally that it is difficult to be an absolutist, like most other issues in either particular direction.

I think it is important for the members of the committee to know, and this fact is probably well known to the bar association, that the Court of Appeal is strongly of the view that it cannot adequately handle its present work load without some significant changes.

I think the Court of Appeal itself regrets the fact that its work load has necessitated the expansion of the court to the size it currently represents. Without any question it is the largest Court of Appeal in the country of any provincial court of appeal, bearing in mind the nine-member court of the Supreme Court of Canada.

Although the issues are somewhat different, I think we have a court of some 17 members. This is of concern to the court itself because it is desirable in the best of all possible worlds to have

a smaller court where you are likely to have a greater consistency as well as collegiality. That, of course, is not to comment adversely for a moment on the qualifications of any of the members of that court, because they are obviously all very highly qualified people who are all making an important contribution to the administration of justice.

There is no more distinguished appellate court in the country than our Court of Appeal, in my view, but it is concerned about its work load and the fact that it is dealing with a number of cases which it feels are of a relatively routine nature. They have expressed to me in very forceful terms that they are unable to pay sufficient attention to the important legal issues as a result of this work load.

It leaves us with certain alternatives. One alternative that has been proposed is a further expansion of the court, which I think everybody agrees would be unwise. A second proposal that has been advanced is the creation of an intermediate court of appeal, which has happened in other jurisdictions. There are certain members of the court and the profession who would like to see the intermediate court. That has been recommended by several reports emanating from that court.

The concept obviously has a great deal of legitimacy, but if we were to create an intermediate court of appeal, it is my respectful view that at least some of your concerns would still be applicable. Truly, they would not be members of the High Court of Justice, but still the result would be the same as far as the accessibility of the highest court of the province is concerned.

In my respectful view, an intermediate court of appeal would only make sense if we were in a position to reduce the Court of Appeal, the highest appellate court in the province, say to nine members. If that court were able to say to the Attorney General, for example, "Of our complement, we have a certain number of judges who at this time would be prepared to serve on an intermediate court of appeal," it might make that proposal a little more attractive from our standpoint. One can understand, with respect, why that is unlikely to happen. The suggestion has not been forthcoming.

With a court as large as this one, to create an intermediate court of appeal at this time, notwithstanding the fact that attrition over a period of years would reduce the size, the fact of the matter is that would take a large number of years to happen.

Given the strong views of the Court of Appeal that it cannot do its work effectively with the same volume, we are left, in my view, with two fundamental proposals. One is the creation of an intermediate court of appeal, which, as I understand the submission of the Advocates' Society, is basically what it is recommending although it may not call it that; I have not looked at it. They agree with respect to the monetary jurisdiction, but instead of the Divisional Court I think they would prefer that the monetary jurisdiction be related to the intermediate court of appeal. I cannot recall whether they call it an intermediate court of appeal. I think they want to call it a permanent branch of the Divisional Court. That is my recollection.

In any event, the result would be the same, with the exception that the accessibility to the highest court would not be affected. The change would be that the judges sitting in this permanent division would be dealing with appeal courts on a day-to-day basis throughout their career rather than moving from the trial court to the Divisional Court, which does raise some concerns with respect to the special expertise that we understand is required for appellate work.

Those are some of the options that have been presented to us.

The High Court judges and the Divisional Court at the present time, as is well known to the members of the association, do sit in appeal now on interlocutory matters; so the concept of sitting in appeal with respect to their brother judges, at least in interlocutory matters, is the existing situation.

We already recognize and have recognized for a long time the monetary jurisdictions, at least at the trial level. The average citizen who is litigating for a smaller amount of money does not have access to a Supreme Court judge unless it falls within the monetary jurisdiction of the Supreme Court. These monetary jurisdictions have long been part of our law. By saying that, I do not want it to be thought for a moment that I am insensitive to the issues that have been raised by the Canadian Bar Association with respect to the automatic right of appeal to the Court of Appeal without leave.

11:40 a.m.

I am troubled by the fact that, even with the proposed amendments to the Divorce Act, I am told, the federal government still wants to legislate appeal routes for matters that are dealt with under the Divorce Act. I think this is very unwise. We strongly urged the federal government not to do that because, given the important provincial jurisdiction in family law matters and given the overall responsibility of the provincial governments to establish the fundamental structure of the courts system, I personally believe the insistence of the federal Minister of Justice in legislating appeal routes under the federal Divorce Act is an unwise and unnecessary encroachment on provincial responsibility with respect to the structure of the courts in the province. It just creates unnecessary confusion, and it is another example of the blind centralism that seems to have affected some of the institutions in Ottawa.

Mr. Elston: Somebody should go to Ottawa and tell them.

Hon. Mr. McMurtry: I might say the term "blind centralism" is not mine. It is a term that was applied by a very distinguished judge of the Supreme Court of Canada in a recent decision and it did have some appeal to me.

I agree with the bar association, that does complicate the matter further.

Certainly, on the issue of a backlog, if the Divisional Court is to be given this appellate responsibility, I agree there

should not be the differential in waiting time. This is something that has to be addressed.

I just want to conclude by reiterating that this is an issue of great concern to me. I am very much aware of the legitimacy of the concerns that have been expressed. Whatever way we proceed, the options are not totally attractive if we accept the proposition advanced by the distinguished members of the Court of Appeal that the existing situation is not acceptable from their standpoint. If we accept that proposition then, whatever route we pursue, it has some unattractive dimensions to it. I readily concede this.

If we do proceed in the manner currently proposed, I want to assure the bar association that this is obviously something that will have to be monitored very closely to address, or at the very least ameliorate, the concerns you have articulated, to the extent that we can.

I want to thank again my colleagues in the profession who represent the Canadian Bar Association--Ontario, the president and the chairman of the family law section, for their great interest, support and involvement in the development of this legislation and for being here this morning. Thank you very much.

Mr. Chairman: On behalf of the committee, thank you, Miss Gotlib and Mr. Davis, for appearing here this morning.

Miss Gotlib: Thank you, Mr. Chairman.

Just a word, if I might. We have spoken to the submission of the family law section. There is a submission from our civil litigation section and a further submission from our business law section. I have been in touch with Mr. Arnott about those. They have come up rather rapidly and have not had the lengthy deliberation that the family law section submission has.

There is an executive committee meeting of the branch tomorrow at the noon hour. We will be dealing with those submissions as an executive. With your permission, I may come back to you with two further submissions, perhaps more brief than the one today, one each from the civil litigation section and the business law section. I do not want to pre-empt my executive's decision on how to deal with that, and I will call Mr. Arnott after we have had our meeting, if that would be all right.

Mr. Chairman: Fine. Thank you very much. I was aware that there would be a meeting on Wednesday. I will discuss their possible appearance on Thursday or Friday, whenever we schedule it.

Mr. MacQuarrie: On this question of the same level sitting in appeal, before they established the appellate branches in some of the provincial jurisdictions--in Prince Edward Island, for instance--you used to have the Supreme Court in banc sitting in appeal over one of their brother judge's decisions. If you examine the record, I think you will find that the functions of that appellate body compare very favourably with any court of appeal in terms of a thorough review of decisions and quite often overturning them.

Mr. Breithaupt: But you get the consistency and the collegiality there where you have two or three of them sitting upon a decision of the other in effect, whereas there are probably only four or five in that court. I do not think that simple numbers now would help, although I agree the results were most suitable to the administration of justice there.

Mr. MacQuarrie: It seemed to work well. As to being reluctant to cast aspersions on their colleagues' ability and so on, they were not at all--not necessarily ability; it was not phrased quite that way.

Mr. Davis: I would reiterate something the Attorney General said, though, that the Court of Appeal feels rightly that it has a specialized function and different skills to bring to bear. It may be that other situations where they have not split the two courts have functioned adequately, but I think it is generally thought that a fresh look by new faces and a specialized court is the better way to give justice to the individual. I think Mr. Breithaupt's contention about uniformity is one that has to be looked at as well.

Mr. MacQuarrie: I look at situations where you have judges who are great friends and meet continually, day after day, and sit on different benches. You can recall the famous controversy between the then president of the Exchequer Court, Mr. Justice Thorson, and the Supreme Court of Canada; these people were all in daily contact and all the rest of it, but every time he came down with one of his 25-page judgements or whatever, the Supreme Court of Canada hammered him hard with great regularity.

Mr. Chairman: We would now like to turn to the researcher-report writer for the loan and trust review. I had asked the clerk to send you all a letter on January 20 in regard--

Mr. Renwick: I guess we do not need to keep the Attorney General for this discussion.

Mr. Chairman: If he would like to stay, he is welcome.

Mr. Breithaupt: Can I raise one point? Mr. Chairman, we have a number of submissions here that have been sent in, to which the writers will not be appearing to speak. Could we agree to put aside perhaps half an hour either tomorrow morning or afternoon at the end of the other presentations so that these at least could each be given a few minutes and the Attorney General might wish to speak to any of the particular themes? In that way we would have cleared all of the points or at least would have them referred to the particular sections in some order.

That would allow us, when we get to the actual clause-by-clause stage, to refer one way or the other to a particular section with the attitude of the Attorney General on the record. We would also then give to the persons who have attended the knowledge that we have looked at their submissions and at least considered what they have brought before us.

Mr. Chairman: Does the committee agree?

Mr. Breithaupt: We could fit them in as there may be time.

Mr. Chairman: That sounds reasonable.

Before we let the Attorney General slip away on us, Mr. Renwick, I think we should ask him a question. If you would just turn to our proposed schedule for the hearings, I believe the Attorney General has a bit of a problem for the Wednesday evening session. You have a commitment, Mr. Attorney General?

Hon. Mr. McMurtry: Yes, several.

Mr. Renwick: Mr. Taylor has a problem too.

Mr. Gillies: I cannot be here Wednesday evening either.

11:50 a.m.

Mr. J. A. Taylor: I dare say neither can most of the committee members.

Mr. Chairman: What I wanted to discuss with the committee was possibly whether Mr. MacQuarrie could be--yes, Mr. Mitchell?

Mr. Mitchell: Mr. Chairman, listening to what is going on here, it would appear there is a number of members of our committee, let alone the minister, who are unable to be here Wednesday evening. I know the intent of that was to allow us time to complete the briefs so that we could on Thursday, after the final one which I believe is at two o'clock, get into the clause by clause. It appears, at least to me, that is not something we are going to be able to do.

We had agreed when we set the schedule that we would sit Tuesday, Wednesday and Thursday and, if it was necessary, to put in evening sittings during that period. On the basis that Mr. Renwick, Mr. Gillies and others have indicated they will not be here, would it be possible and would it meet with the committee's concurrence that what we do not finish by rescheduling the briefs to Thursday--if it can be done; I leave it to your judgement--to complete the briefs on Thursday, that we then add on the night sitting on the Tuesday of next week to do the clause by clause?

Mr. Chairman: We have another problem with that. As you heard, Miss Gotlib said the Canadian Bar Association, the two other divisions, had contacted us earlier. We were thinking that if they decided to come on Wednesday and appear, I believe we have already an afternoon session with Mr. Youssef. We thought we would schedule those two groups of the Canadian Bar Association in the afternoon. I was going to discuss with the committee whether we could then do the clause by clause Thursday night or Friday morning.

Mr. Mitchell, to move it around again--

Mr. Mitchell: I have scheduled based on the agreement we

reached in this committee, as most of us have. There is unfortunately no way I can be here on Friday morning. I could be here Thursday evening. That is speaking strictly for myself.

Mr. Chairman: That is what I wanted to ask. If the Canadian Bar Association wants to come, it would seem logical to have it with the other group on Thursday afternoon, and then we could do the clause by clause on Thursday night.

Mr. Renwick: I am not available Thursday.

Mr. Breithaupt: It seems as though it would be difficult for members of the committee to sit on Thursday evening. Might I suggest that we agree at least to complete all of the presentations that are before us? Then it may be that our clerk can put together a summary of the various sections referred to, so we have at least a cross-reference with all the submissions included.

We know the committee is going to be dealing for three weeks at least with the trust company reference. It may be that reference will take us into a fourth week, depending on the submissions that are there.

Why could we not agree to commit half a day in that fourth week, as it may be needed, to do the clause-by-clause situation and, who knows, we may also have that requirement depending on the presentations we get on the architects and engineers, although I think that is somewhat less likely. I do not think there will be that many organizations involved.

Interjection: More.

Mr. Breithaupt: I am told there are more. If that is the case, it may be that the clause by clause for both of these bills, Bill 100 and Bill 123, should be particularly scheduled in a further week. That would allow some planning to occur now for people to make their schedules and would also make sure we had all the materials before us.

There is a suggestion, because I do not think we are otherwise going to fit it in very thoroughly, even though perhaps one or another member might not be able to be here in that week. At least it is an idea, if that is of use.

Mr. Chairman: We are looking at four or five weeks on the trust matter. If you are talking about a date, you would be looking somewhere in the week of March 6.

Mr. Breithaupt: I was hoping that we could fit it in. If the trust company matter takes five weeks, I feel we are obliged to fit in this clause-by-clause situation during that period.

After all, the committee will have met at that point for seven weeks. I do not think we want to get into an eighth week. Surely we can fit in, on one of the evenings during the trust company period if necessary, or in an afternoon if it can be

otherwise attended to, the clause-by-clause requirements for both of these bills.

It may take two evenings, but we might be able to plan that sufficiently well ahead when we know during the first week of the trust company hearings what that schedule is likely to be. Perhaps we can agree, if nothing else, to leave the clause-by-clause situation for both of these weeks, this week and next week, to be fitted in somewhere in that five-week term.

Mr. Mitchell: Mr. Chairman, I usually find it very easy to agree with my colleague from Kitchener but we have three pieces of legislation that are related to the Attorney General's office. Because he has set aside this period of time, I think we should make every attempt to try to resolve the clause by clause and all deliberations on these three pieces within that time frame if at all possible.

Mr. Breithaupt: Within these two weeks, do you mean?

Mr. Mitchell: Yes. Obviously something has happened which creates a problem for a number of members of the committee regarding sitting on Wednesday evening. Sometimes that is unavoidable. If we are not already scheduled to do so, I am still of a mind that we should try to sit on one evening next week. Are we or are we not?

Mr. MacQuarrie: Bob raises a good point there about trying to clear up the bills from the one ministry in the same allotted time frame. We should select an evening where most of the members of the committee could be present. Springing Wednesday on us this way, it seems to me there are a number of people tied up, but if we can look a week or so ahead we might be able to pick an evening where everyone could be here.

Mr. Mitchell: That is why I raised the question. Have you a schedule for a night sitting next week?

Clerk of the Committee: Not yet.

Mr. Mitchell: Not yet? Fine.

Mr. Gillies: My problem with the Wednesday, as may have been the case for Mr. Renwick and several others, was the late notice. Could I suggest that perhaps by a show of hands we could arrive at an evening next week that will be convenient? For instance, I could be here Tuesday night or Thursday night or both.

Mr. Breithaupt: We were told by the clerk that we have even more submissions under the engineers' and architects' bills than we have for this. If the committee is sitting evenings next week, presumably it will be occupied on those. Is that not likely?

Mr. Mitchell: I accept that as a possibility. However, I still maintain that we should attempt to finish off those bills that relate to a specific ministry at the time we are debating them, to the extent that it is humanly possible. If the committee finds acceptance with this, recognizing what has happened with

this week, I would be quite prepared to leave it in the hands of the chairman to see how he and the clerk can adjust the schedule.

The member for Brantford has raised a question. If we could ascertain from the committee members at this time how many of us could sit Tuesday, Wednesday or Thursday, the chairman needs that for guidance. I can sit any one of the three nights next week.

12 noon

Mr. Chairman: First of all, who would be here tomorrow night?

Mr. Mitchell: It is hardly a good representation when the critic for the third party is not going to be available.

Mr. Breithaupt: The presentation I presume we are going to hear is one that has come before the Liberal caucus from a group of television people most particularly interested in being able to have coverage in the courts following a variety of American experiences.

I believe the Attorney General is quite familiar with the kind of presentation this group will make. It is likely to be a film presentation on a television monitor on how some of the American jurisdictions have gone about dealing with this subject. It may not be necessary for every member of the committee to be here for that presentation, if we could go ahead to accommodate those persons. It would be very nice if we could sort it out.

Mr. Mitchell: I offer you an alternative suggestion, although it seems contradictory to the position we took. Next Monday is probably out because of schedules, but since Monday is not a regularly scheduled day, if you wanted to proceed on a Monday afternoon, not next Monday but the Monday following, it would still be part of the Attorney General's preparation and we could finish it and then proceed with our normal business.

Mr. Chairman: First of all, the committee does not have authorization to sit on Mondays. Second, when we discussed the scheduling in December, I brought up the point that perhaps we should sit Monday and take Friday off if we did not have it, but everybody agreed they would rather sit on a Wednesday evening. That is why we scheduled the group on Wednesday evening.

Mr. Gillies: With respect, we did not know you really meant it.

Mr. MacQuarrie: Many of the members have trouble if we advance that evening sitting to next Tuesday or Wednesday, because obviously there is some conflict this week.

Mr. Mitchell: I suggest to you next Tuesday, next Wednesday and, if necessary, next Thursday.

Mr. Breithaupt: Except, as the clerk has suggested to us, we may require that time for the presentations for next week's bill.

Mr. Mitchell: By adding on the three nights, we might be able to accommodate that.

Mr. Breithaupt: We may decide we simply have to accommodate it and a lengthy presentation is not going to be necessary.

Mr. Mitchell: Mr. Chairman, try us for Tuesday, Wednesday and Thursday of next week, whatever your schedule finds necessary, and we will try to live within those guidelines.

Mr. Chairman: You want to cancel tomorrow night and make some alternative arrangements?

Mr. Mitchell: I do not think we have any recourse. You have four missing, the Attorney General and at least three of our members.

Mr. Chairman: The problem is--

Mr. Renwick: I cannot be here tomorrow night.

Mr. Chairman: In other words, you are asking to schedule them some time next week.

Mr. Mitchell: I am prepared to be here, if it is your feeling, that is why I have left it to you. I can be here. I just point out the number of people who cannot be here tomorrow.

Mr. Chairman: When do you propose to do clause by clause?

Mr. Mitchell: I am quite prepared, if you say we cannot do it on Monday afternoon, that we deal with it some time next week by adding the three night sittings on, if necessary.

Mr. Chairman: Mr. Renwick, do you agree?

Mr. Renwick: I am comfortable with Tuesday evening, January 31.

Mr. Chairman: Would there be any point in extending the sittings on Wednesday afternoon and Thursday afternoon to try to accommodate some of these groups?

Mr. Mitchell: Not from my point of view.

Mr. Breithaupt: I am comfortable, as Mr. Renwick says, if on January 31 we can do the clause by clause on this bill.

Mr. Renwick: And hear the presentations we will not hear tomorrow night. I am anxious that the Attorney General be here for the radio and television presentation. I would be interested in his comments on that topic.

Mr. Breithaupt: If that is the case, then it seems we are not going to be able, practically, to do the clause-by-clause discussion, either on Bill 100 or on Bill 123, during this or next week, simply because of the number of presentations. If we agree

that likely is going to be the case, would we not be better off to say so now and have the clause-by-clause arrangement on both bills at a time convenient to the Attorney General during the weeks of the trust company presentation?

I think the ministry is going to be before us more or less in the first week; perhaps a half day can be found there or an afternoon the following week that is convenient to the Attorney General so we simply say we will not be hearing other groups, that the committee is doing other things that afternoon.

As long as there is sufficient notice, since we are all going to be here otherwise and the Attorney General has a convenience for being present, we may be able to sort the thing out when we know the schedule for the trust company reference.

Mr. Chairman: When we discussed this with the Attorney General and the Minister of Consumer and Commercial Relations (Mr. Elgie), the problem was their time schedules. I think I recall that February was a bad month for you, Mr. Attorney General. How is the first week of March?

Hon. Mr. McMurtry: I think that would be fine. I would suggest, with respect, that if we are not going to sit tomorrow night, perhaps these two submissions could be fitted in tomorrow afternoon and Thursday afternoon to at least get the submissions.

Certainly I think I could be available the beginning of that first week in March. But towards the end of the week there is the constitutional conference in relation to aboriginal rights. I can check that at lunchtime.

Mr. Breithaupt: Let's try again.

Hon. Mr. McMurtry: The Monday or Tuesday will be fine.

Mr. Breithaupt: Of the first week in March.

Mr. Chairman: That is March 5 and 6.

Mr. Breithaupt: Then let us plan that now. The trust company reference will likely take us the four weeks in February.

Hon. Mr. McMurtry: There are probably other times in February, if that would be of assistance.

Mr. Breithaupt: For consistency, let us plan that on Tuesday, March 6, we will do clause by clause for Bill 100 and, say, Wednesday, March 7, we will do it for Bill 123. Then the various groups that come before us will know that if they want to be here to talk about a certain clause or to make a particular comment they can plan their days now, and that we will do Bill 100 on March 6. We will finish the bill and do the other bill on March 7. Something like that might be a help.

Mr. Mitchell: As a question to the Attorney General, does your busy schedule allow you to fit that in?

Hon. Mr. McMurtry: I would think so. I would like to check over lunch the dates of the constitutional conference. I would also be interested in a day or so in February, if it were convenient for members of the committee.

Mr. Chairman: The clerk is notifying me that we are allowed to sit on Monday, March 5, so if that is the case, you can have March 5, 6 or 7, or if there is a more convenient date for you in February and the committee could arrange it, we could do it at your convenience.

Mr. Breithaupt: It may be better to get the dates firm now, to acknowledge they are going to be March 5, 6 or 7, whichever, and then we will be able to finish it in good order.

Mr. Mitchell: I am prepared to leave it in your hands, Mr. Chairman, to resolve it with the Attorney General, on the basis of clause-by-clause discussion on that commitment. If the Monday is available, that is fine.

I agree with the member for Kitchener that we have to hear these groups that want to have their briefs prepared. If we can do it within the hours normally left to us this week, I would like to handle them and get them done.

12:10 p.m.

Mr. Chairman: One more little item. If we are going to move the Wednesday evening session to Wednesday afternoon and Thursday afternoon, that is fine. The only other problem we may have is if the Canadian Bar Association comes to us and the two other groups want to have their presentations, when do we fit them in? Are we going to continue on Thursday?

Mr. Breithaupt: If they are prepared to make a brief presentation on certain particular points on Thursday, then that is fine, remembering they have had the opportunity to make their plans. It may be we will simply have to receive their reports and refer to the clauses on our own, as the clerk sets out in the chart that this group is interested in changing section 7 and that group is interested in changing section 8, or whatever. We may not be able to hear them personally, but they had as much warning as anyone else. We cannot necessarily accommodate every single person.

Mr. Chairman: Mr. Renwick, are the fifth, sixth and seventh agreeable?

Mr. Renwick: Agreeable.

Mr. Chairman: That will be all right. We should now move to the loan and trust review. I sent a letter on January 20 to all committee members to think about a researcher, a report writer for the loan and trust review. In the letter there are, I believe, four options. One option was to engage outside experts. The other option was secondment of staff of the Ministry of Consumer and Commercial Relations to serve on a full-time basis for the duration of the committee's loan and trust review.

The third option was to ask the legislative research service to assign a researcher to the committee. The fourth option was basically to rely entirely on ministry staff for research and background information. I would like to hear some of the members' views on this.

Mr. Breithaupt: The questions that have been raised about the whole trust company theme are pretty well set out and I do not think either of the opposition parties requires much help in framing what questions they want to ask.

To benefit the committee, it would seem to me what we require is not someone who is going to help us do the research or to pull together questions when we have had a year's press clippings to sort out. What we really need is a person who is going to have the report-writing capability and, as a result, I would favour the third option, which is to use the legislative research service we have, with a person of whatever background, whoever is available, who would be available to help write the report, not do the research for it because we all have perhaps 50 questions we could ask and we are not likely to get anybody who is going to be particularly helpful from the ministry or otherwise, or some consultant or whatever, who can pull together the questions any better than those of us who have lived with this thing for the past year. That includes government and opposition members alike.

We have a research service already in place. It will obviously not cost us anything to use that and, indeed, helps to justify the existence of that organization as it becomes more useful to the committee stage, as we had hoped might occur when they were set up in the first place.

I would very much favour the third option. It is not a requirement of having someone particularly expert in trust company matters, but rather someone who has an ability to assist in the writing of the report, the sorting out of issues and the phrasing of the various themes that we will come to a conclusion about.

Mr. Gillies: Briefly, I would like to concur with my friend the member for Kitchener (Mr. Breithaupt). I think that since I got here I have been on three or four committees that have brought in reports. In each case, the legislative research service has done an excellent job at pulling the job together. Frankly, in one or two of those instances we contemplated getting some outside expert to come in. I recall one report where we felt we would proceed with the service here in so far as it was practical and then move to an outside expert. That did not prove necessary. They has a very good capability. They are objective and I think fill the bill for us.

Mr. Chairman: Anyone else? The only problem, if you look at number 3, is that, as they state in the letter: "But they feel that they do not have an expert staff member with the range and degree of expertise required in such a complex study to provide primary assistance and direction to the committee."

Mr. Breithaupt: I think it is clear that those of us on the committee may not feel we have got the range and expertise, either, but we have to get on with the job. I do not think we are looking for any direction from that person or for any necessary "primary assistance," as it is phrased. We all have an ability and a background, government and opposition members alike, to know that there are a number of issues and there are some questions to ask as to what is happening, what has changed and what the future will hold.

So I do not think we are looking at that from this person. I think we are looking at report-writing assistance. We should clearly state that this is what is expected, and this person should not feel overburdened by such a request.

Mr. Renwick: I am quite happy with the proposal that Mr. Breithaupt has. If we simply need an amanuensis for report purposes, I think legislative library research have got to be advised very specifically that we are not expecting them to provide us with some kind of instant expertise on the matter.

I am concerned, however, that the ministry understand, and understand very early so they have plenty of time to arrange it, that with the number of consulting firms that have been involved in these various inquiries, I will not expect to be sitting here with just the ministry, the minister and his advisers here. I will expect that Mr. Morrison and members of Touche Ross, Clarkson Gordon, and Coopers and Lybrand--and I think two or three other firms are involved in this that have been carrying on the studies and have expertise on it--will be available to the committee. I also expect that the three persons who became chief executive officers of those companies will be available to the committee.

I approach this committee with a degree of scepticism bordering on cynicism, but I would certainly be anxious that we not run into barriers raised by the ministry about having those outside experts whom they called in available to this committee to answer some of the questions that will obviously come up during the course of the discussions.

Mr. Gillies: Further to that, Mr. Chairman, I know this is not always normal in drafting a report or in considering a reference, but in view of the fact that there are going to be people coming before the committee dealing with matters, some of which are still subject, as far as we know, to criminal investigation and some of which are subject to review in other fora than this committee, it may be valuable for us as members to have somebody from legislative counsel present from whom we can get a quick opinion on some matters.

Mr. Renwick: I am certainly not asking for anybody who is subject to any investigation to come before the committee.

Mr. Gillies: Pardon me. Perhaps I misspoke myself. While we may not be calling people forward, matters will be discussed that will be of that genre. I just think it might be helpful to have someone from legislative counsel.

Mr. Chairman: For ourselves once we get into it.

Mr. Breithaupt: Just one other item. At least one book has been written on these events, I believe--perhaps several books--and probably several rather lengthy articles in journals that I may not know about. Will the chairman be able to get us copies, as I think each member probably would benefit by having a copy--I know at least one book on the subject and there may be others--in whatever form they are in, along with any of the more lengthy summary articles that may have appeared? I think if we had that the first week, we would be able to read up on it during the overview presentation and be prepared, in a better way, for the individual presentations that are going to be made before us.

Mr. Gillies: Most helpful.

Mr. Chairman: Fine. I will look into that. We have agreement that I will have the clerk talk to the legislative research service. I hope we will have the person in place as we start the committee hearings.

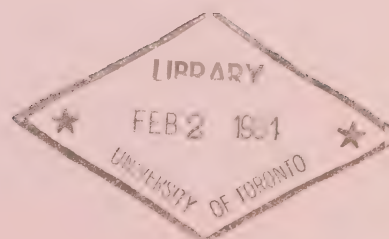
Mr. Breithaupt: No doubt, they will also want at least to read that book and the other articles to get a sense of the thing, which should be sufficient for them to get more or less current on it as they come to their duties.

The committee recessed at 12:22 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
COURTS OF JUSTICE ACT
TUESDAY, JANUARY 24, 1983⁴
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F., (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division

Perkins, C., Counsel, Policy Development Division

Witnesses:

Baar, C., Professor, Brock University

Murphy, D., Past President, Huron County Law Association

Prouse, B., Court Reporter, Ottawa

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 24, 1984

The committee resumed at 2:10 p.m. in committee room 1.

COURTS OF JUSTICE ACT
(continued)

Resuming consideration of Bill 100, An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: I see a quorum. The meeting will come to order. We have with us this afternoon Professor Carl Baar, from Brock University.

CARL BAAR

Mr. Baar: Mr. Chairman, I think a copy of my statement has been distributed. I very much appreciate the opportunity to appear before your committee. I am still hopeful that the minister might be here, because I do plan to support very strongly statements that he made in the past, even though I am opposing some provisions of the legislation that is before you today.

My brief is directed to those aspects of the proposed Courts of Justice Act that deal with court administration, particularly those provisions designed to clarify the relationship between the judiciary and the executive. My perspective derives both from many years as a student of court administration--I might say as a political science professor and not as a lawyer--and from my work as research co-ordinator for the Canadian Judicial Council's 1981 project on independent judicial administration of the courts, headed by former Chief Justice Jules Deschênes, which published this large document, which I will not attempt to summarize in either official language.

Mr. Mitchell: Oh, please. Five minutes or less.

Mr. Baar: Part VI of Bill 100, which is sections 92 to 96, deals directly with the major issues of the Deschênes report. However, it takes a position that is opposed in principle to the major thrust of the report. Therefore, I would like to summarize the major concerns of the report so that the committee can consider an alternative approach to the relationship between the Ministry of the Attorney General and the judiciary on matters of administration.

Deschênes's writings have for many years reflected a passionate belief in the fundamental importance of an independent judiciary in a free and democratic society. His report separates issues of fundamental judicial independence from issues of the independent administration of the courts. He begins with the notion that fundamental independence requires that decisions of judges in individual cases not be subject to outside control or interference. Following from this principle is the generally

accepted corollary that neither the tenure of judges nor the assignment of a particular judge to a particular case should be subject to executive discretion.

While fundamental independence is supported by governments, legislatures and the judiciary in Canada, Deschênes still discovered a wide variety of provincial, territorial and federal laws that allow executive discretion in matters of judicial tenure and case assignment, and his report contains 43 recommendations on the subject.

Ontario's statutes fare better than those of some other provinces in which judges serve at pleasure, are placed on a year's probation or can be removed by cabinet order if they act "in a manner contrary to the public interest" of the province. To the extent that Ontario's statutes still contain provisions that could allow the executive to infringe on fundamental independence, the present draft of Bill 100 improves significantly on them and should be commended for doing so. I refer to four different sections:

Subsection 55(4) alters the provisions for reappointing a judge once he has reached the compulsory retirement age of 65. Under present legislation a judge over the age of 65 serves at the pleasure of the cabinet. The provisions recommended in Bill 100 would allow a judge to continue after age 65 either with annual approval of the chief judge of the provincial court or between the ages of 70 and 75 with the annual approval of the judicial council.

Section 57 revises the procedure for removal of a provincial court judge for cause so that the removal order would, upon the enactment of Bill 100, be made on the address of the Legislative Assembly and not by the Lieutenant Governor in Council alone. The recommendation could only follow the recommendation of a judicial inquiry. Now the law requires that an inquiry be held, but it does not require that the inquiry make a recommendation of removal prior to the government doing so itself.

Section 66 allows a judge who is appointed in an administrative capacity to elect, after five years in office, to assume the office of a provincial judge only. This is a significant innovation. At this time chief judges cannot elect to give up administrative duties and remain on the bench, even though the press of court business is added substantially to the challenge of administrative work. To remain on the bench a chief judge would have to negotiate a new appointment with the provincial government--hardly a desirable situation.

Section 66 provides the needed flexibility here. Similar provisions exist in Quebec but not federally, and I would urge the federal government to follow Ontario's example when it next amends the Judges Act.

Finally, I refer to section 94, which gives statutory recognition to the authority of the judiciary over case assignment and explicitly recognizes that ministry officials should not determine who is assigned to hear particular cases.

After considering fundamental independence and some of the items I have just mentioned, Deschênes goes on to the heart of his report, the relationship between the judiciary and the executive on matters of court administration.

Here he faced the same paradox that many government agencies have faced over the past decades: How can principles of ministerial responsibility and accountability be balanced against the requirement that the judiciary do its work independently?

Historically, that question has been answered by giving governments full control over court staff and court services in attempting to isolate the judge's decision-making functions from matters of court administration. However, this is becoming increasingly difficult to do. As case volume increases and litigation grows more complex, the outcome of adjudication becomes inextricably linked to the way the courts are administered.

For example, the outcome of civil or criminal cases can change because of delay in bringing matters to trial, a judge's child support order may be ineffective without adequate enforcement machinery, or the defendant in a Provincial Offences Act court could find his driver's licence suspended for six months following the decision of a nonlawyer justice of the peace with neither a lawyer nor a witness present in the courtroom.

According to present practice, these administrative problems are the responsibility of the Attorney General. Yet none of the major administrative problems of the courts can be dealt with except through involvement of the judiciary. Efforts to reduce court delay, to enforce child support payments or to reduce the cost of litigation cannot be implemented without leadership and support from the judiciary.

Leaders of the judiciary are prepared to deal with these questions but are wary of having the Attorney General exercise authority because he, like his counterparts in every Canadian province and territory, has a dual role. He directs the prosecution of criminal matters in the courts and superintends the administration of those courts. The first role makes him an advocate in thousands of cases every year. The second role makes him responsible for the functioning of the institution within which those cases are decided.

This dual role is no longer tenable. Either an Attorney General leaves court administration alone and problems increase, or he takes an active role and is criticized for infringing on judicial independence. He is damned if he does and he is damned if he doesn't.

What the Deschênes report proposes is a system for administering the courts that would move away from this untenable position and be consistent with both the independent status of the judiciary and the principle of responsible government.

Many analogies were available to Deschênes. Governments for decades have created crown corporations which operate independently of established departments, so that day-to-day

decisions are not controlled by government. Auditors general have attained independent status in Canadian provinces. Most of them are harder to remove from office than provincially appointed judges, and those offices are able to operate with independently administered staff and budget.

The Ontario Ombudsman is responsible to the Legislature but freed from administrative constraints imposed by the executive. The Ontario Legislature, once administered through an executive department, now, following recommendations of the Camp commission, controls its own administrative apparatus.

These administrative arrangements did not develop because governments were accused of attempting to sway individual decisions. Independent administration has evolved as a logical support for independent decision-making, a form of organization that follows the function being performed and a way of reinforcing in the public mind that certain functions are in fact distinct from government.

2:20 p.m.

If the development of modern courts forges a closer link between adjudication and administration and adjudication increasingly finds courts ruling on government action--the Charter of Rights being the most visible example--it becomes logical for courts to be administered within a framework similar to the administration of auditors general, ombudsmen and legislatures.

For Deschênes, this means the judiciary, not the executive, should be responsible for court administration within a framework that provides accountability directly to the Legislature. Deschênes sees the judicial role in court administration evolving through three stages: from consultation to decision-sharing to independence. He realizes that the judiciary's long reliance on the executive to manage court services makes it unlikely that old patterns will be transformed quickly, but he provides a blueprint for the provinces to follow.

Part VI of the proposed Courts of Justice Act takes the Ontario courts only to the first stage of consultation. Section 93 provides statutory authority for an Ontario courts advisory council. That council may be consulted by the Attorney General, but there is no requirement that it be consulted prior to the introduction or enactment of legislation. No decision-sharing is embodied in Bill 100, not even the limited decision-sharing that has existed for several years in the British Columbia court system.

At this time, it may not be possible for Ontario to go directly to the third stage of independent judicial administration of the courts. However, Bill 100 goes in the opposite direction; it entrenches in legislation the old system that operated by convention.

Section 92 explicitly authorizes the Attorney General to "superintend all matters connected with the administration of the courts..." Superintendence is a broader concept than responsibility or accountability. The Attorney General's

superintending power in section 92 does exclude "matters that are assigned by law to the judiciary," but Bill 100 assigns little to the judiciary. I refer there to the direction of courtroom activities in section 96 and the assignment of judges to cases in section 94.

In contrast to this proposal, both the Canadian Judicial Council and the Ontario Committee on the Independence of the Judiciary, chaired by Mr. Justice Osler, supported the concept of decision-sharing.

Ironically, Attorney General McMurtry himself recognized the problems arising from executive control of court administration, in 1976, when his ministry prepared a white paper on courts administration that recommended administration of the courts by a judicial council independent of the executive but answerable to the Legislature through the Attorney General. The white paper proposal was one of the inspirations for the Deschênes report, but it was not followed in Bill 100.

I would urge this committee to support the principles enunciated in the white paper and the Deschênes report and to recommend that Ontario adopt a responsible system of court administration independent of the executive. Because this is a complex problem that cannot be covered in a few brief sections of a statute, and it appears both the government and the judiciary wish to go forward with much of what is in Bill 100, I do not propose that the committee delay the legislation.

I do feel strongly that at least two changes must be made in part VI to ensure that the courts are not placed within a statutory framework that would hinder the healthy evolution of a larger judicial role in court administration. I understand the ministry itself would like to see the judiciary play such a role.

Therefore, I recommend, first, that section 92 be deleted. Presumably, the judiciary can already act on matters it is assigned by law. Thus, the only change this provision would make is to give authority to the minister in instances where that authority may now be shared in practice. Thus, section 92 moves away from a judicial role; it invites the minister to solve problems not by negotiating but by imposing authority. It will not reduce conflict and it may increase conflict.

Second, I recommend that section 94 be amended to add the words "at least" to the third line before "to the extent necessary." As it now reads, section 94 not only gives the judiciary authority over those aspects of case-flow management that affect who is assigned to hear particular cases, but also limits judicial authority to those matters alone.

What if the judiciary wanted to prepare court calendars in a new way designed to reduce court delay or to save lawyer time? Section 94 says the judiciary cannot do so. While the ministry would presumably support steps to reduce court delay, if those steps involved, for example, placing limits on the discretion of crown attorneys to schedule cases, section 94 would permit an executive veto.

Again, as with section 92, it would be better to allow the evolution of decision-sharing than to entrench statutory language that permits the executive unilaterally to resolve conflicts with the judiciary.

In the next section, I make some additional recommendations that are related to this but do not follow from this last argument. I do not simply carry the last argument through. Perhaps I might pause here if there are any questions or comments.

Mr. Chairman: I think you should continue for now.

Mr. Baar: Okay. Thank you.

As related issues, there are a number of provisions of Bill 100 other than those in part VI that confer discretion on executive officials where this does not seem necessary. I refer here to a number of provisions that relate to the rule-making authority and the process of exercising it.

For example, section 91 and subsection 215(7) make Supreme Court, district court and surrogate court rules effective "subject to the approval of the Lieutenant Governor in Council." No such requirement exists for superior courts in Manitoba, Nova Scotia or Newfoundland. Sections 74, 77 and 85 place the same requirement on rules for provincial offences court and for the family and civil divisions of the provincial court.

In another aspect, the rules of practice and procedure for these courts are made by committees established under various sections of Bill 100. For example, the rules committee of the Supreme Court and district court, proposed in section 90, contains 28 members, including 14 judges and 10 lawyers, five appointed by the Chief Justice and five by the Law Society of Upper Canada. The Attorney General makes only two appointments directly to that committee.

In contrast, the rules governing provincial offences court, provincial court, family division, and provincial court, civil division, are made by three different committees, each of whose members "are appointed by the Lieutenant Governor in Council." There is no requirement that any judges or lawyers sit on these committees.

Certainly, the composition of the three committees could be more clearly spelled out and the discretion of the executive more carefully confined. For example, the chief judges of each court could share authority over appointments or the judges of the courts themselves could designate members on those rules committees.

In some respects, these three courts require even more sensitivity to relationships between executive and judiciary because government officials are more intimately involved in the adjudication process on a day-to-day basis in these courts than in the superior courts of the province. Community service workers and probation officers are continually involved in family court work. Provincial prosecutors handle large numbers of Provincial Offences

Act cases every day and the provincial government has a pecuniary interest in the outcome of POA cases. In this light, I recommend that sections 74, 77 and 85 spell out more precisely the composition and/or appointment procedure for the three rules committees.

Finally, I note that the unified family court is in a unique and quite different position in terms of its rules of practice. The rules governing other courts do not apply to the unified family court. However, its rules, according to section 52, are not made by any committee but by the Lieutenant Governor in Council directly. Presumably, the Lieutenant Governor in Council follows recommendations from the judges of the unified family court. If so, why not spell the practice out in the statute instead of using language that places no limits on executive discretion and provides no requirement for consultation or decision-sharing?

Finally, I note that Bill 100 maintains executive discretion in another area. The Lieutenant Governor in Council would continue to appoint local registrars of the Supreme Court and local registrars of the proposed district court.

While many of these individuals do excellent work, they labour under the cloud of being political appointees. Their provincial court counterparts under section 95 are appointed under the Public Service Act. As a result, you can see differences in the actual composition of those positions. For example, most local registrars and county court clerks now are predominantly male. The deputy local registrars and deputy county clerks are predominantly female. Perhaps the enactment of Bill 100 can also provide an opportunity for progress in this area as well.

2:30 p.m.

In conclusion, Bill 100 constitutes an important step in the development of the Ontario court system. The ministry is to be commended for its work on the legislation. However, following the historic pattern of common law jurisdictions, improvements in court administration have been given lower priority than changes in jurisdiction and procedure. It is time to give court administration the attention it deserves and implement policies that will allow judges and court administrators to help build the kind of courts of which the people of Ontario can be proud.

Mr. Chairman: Are there any questions? Mr. McMurtry, do you have any comments?

Hon. Mr. McMurtry: I have no questions. I thought I would hold my comments until after any questions have been asked.

Mr. Breithaupt: I want to mention some things that could flow from these general comments; the Attorney General might want to make comments on them after as well.

While you talk about the independent judiciary, I wonder if you have any opinions on the impact which the changes of jurisdictions may have on the actual case load. This morning, I think perhaps while you were here, the Attorney General was

commenting on the concerns within the Court of Appeal that something had to be done either to increase the numbers or to change the responsibilities so they would be able to cope with the framework of responsibilities they had.

Do you expect, from any experience you may have had with the Deschênes investigations, that this shift from the Supreme Court to the district court approach and the changes in jurisdictions will have a measurable impact on the courts? Do you have any sense as to what that impact might be?

Mr. Baar: This is a matter of concern to me in part because I think there is a lot of uncertainty as to what the impact might be. One of the assumptions that may be operating in the legislation is that by altering the county courts and developing them into district courts, one of the things you will do is expand the number of cases that go into those courts.

However, it appears that in practice many of the county courts now operate in the same terms that the district courts would under the legislation. So much of their jurisdiction operates by consent that I would guess there would not be as large a shift of case load from the Supreme Court to the district courts after that legislation is enacted.

What that means is, if you are shifting cases from the Court of Appeal into the Divisional Court, which is staffed by Supreme Court justices, you are going to wind up expanding the work of the Supreme Court of Ontario at the same time that you are not moving towards the merger of Supreme and county courts as has been the case in over half the provinces in the last 10 years.

If one of the purposes of this legislation is to maintain a superior court centrally located in Toronto, then one of the things that seems to follow from that is that you would want to reduce the case load and specialize the work of that court. You may be doing just the opposite in this legislation.

I am not at all certain, but the material that was made public by the ministry did not provide any information about what the expected shift in case load might be. If anything, it looks like it is going to increase the case load in that Supreme Court which, like the Court of Appeal, is supposed to operate collegially and probably will have an even more difficult time doing it.

Mr. Breithaupt: Parkinson's law is, "Work expands so as to fill the time available for its completion." Do you think the changes in this framework are only going to increase the case load at this level without having any particular impact on the work the Court of Appeal is now overburdened with?

Mr. Baar: I would not be certain of that. I find the problem facing the Court of Appeal to be one that poses the difficulties the Attorney General laid out earlier. About five years ago I was asked by the Attorney General of Alberta to study the effects of the merger of their county and Supreme courts on the activities of the rest of the courts in that province. One of

the things they were concerned about was the possibility of having to deal with the substantial case load on the Court of Appeal in Alberta.

I surveyed Canadian jurisdictions and examined the situation in the United States, and in the United States there is almost a unanimous shift as population and case load increase to create an intermediate court of appeal. That now operates, I think, in close to 40 of the 50 states, but it has been almost universally rejected in Canada and it is the same thing the government is now doing, which I think is sound in principle.

If you create an intermediate court of appeal, you are expanding by that much more the process one has to go through to take cases from trial to final disposition if there is an important matter of law. I think there is some need to figure out how to shift cases away from the Court of Appeal so they can be dealt with without having to increase numbers, and this is one approach that would appear to be worthwhile to do it.

I think you are right. The work will still expand; and even if the work does not expand, there is always more time that could be devoted to giving more thought and deliberation to matters before the court. There is commentary now on the major case last week on French-language education rights in Ontario. To the extent that the judges are not overburdened by a variety of sentence appeals and other matters and can devote some time to consideration and discussion of that, I would think their decisions would be stronger as a result. We want to be able to set up those conditions.

Analyses I had seen earlier of the Court of Appeal suggest that the problem is less a function of pure volume than it is of trying to organize the work load and the transmission of materials, particularly transcripts. A lot of the delay in the Court of Appeal in earlier years was a function of delays in the production of transcripts.

I think there are managerial things that can be done to allow the court to function more effectively, and those are the sorts of things, in my thinking, that the judges are in a good position to understand if we are able to tell them that they have some responsibility for handling these things.

The ministry and the Attorney General are concerned in a wide variety of areas; the judges are right there, and one of the advantages of giving them the responsibility for administration is that some of these matters will be able to be given greater attention and greater priority because they are known to the judges as part of their day-to-day work.

Mr. Breithaupt: If the case load is not appreciably changed, perhaps delays might be lessened as a result of giving more responsibility to the judges for administration, and that might be reflected in the costs of litigation being somewhat lessened.

Did any of the work you did for Alberta or otherwise see an

impact on those areas as a result of changing the administrative responsibility even though you might have had a greater volume?

Mr. Baar: The real problem is that the changes in the administrative responsibility really have not been made. As I mentioned in the concluding paragraph of my brief, the focus has been on changing procedures and jurisdictional lines.

One of the things that has been found in studies in the United States that have not been replicated or developed adequately here is that there is not as close a relationship as a lot of lawyers and court reformers have believed between how you organize the courts and how quickly, how expeditiously and how inexpensively litigation can be processed.

The things that affect the cost and delays in litigation are generally managerial in terms of the procedures and process that one goes through. Those things can sometimes be assisted by the way you organize, but the most important thing that affects those is the commitment of the people who are involved in processing those matters to focus on how to do them more adequately.

If I can talk about another study, I have done some work for the federal Department of Justice in an attempt to look at what might happen when they enact these Criminal Code changes that would require criminal cases to be processed within six months. I guess back in Ottawa they were reading the newspapers about how many years it took to get criminal cases through in various provinces, and I suspected that what they had written in the legislation really was not that stringent.

2:40 p.m.

I found that very few provinces would really be affected by the legislation. Ironically, New Brunswick can send any criminal case through in only one month. There were more difficulties in Ontario. They were not in Toronto; they were in isolated county towns and provincial courts that had special problems.

What was interesting was how, in certain jurisdictions, a presiding judge, working with perhaps four or five other judges in applying known but often neglected techniques of case management, was able to substantially reduce the lag. In Hull, Quebec, while one court with six judges was taking 12 months to 18 months before it could schedule a criminal case, the presiding judge took over and within three months that figure went from between 12 and 18 months down to six months.

The same results could be seen by the way in which you distribute work within a court, the way in which you have judges who may not be sitting on a given day available to handle additional cases. You can facilitate this sometimes by reorganizing and by consolidating, but the main way you do it is by getting the people who are working in the courts to be committed to change and committed to improvement of the operations.

Mr. Breithaupt: Do you think the quality of justice or at least the effectiveness of the courts will be greatly impacted

upon if the administrative side of it is much more strongly judge-oriented?

Mr. Baar: Or judge-directed or judge-involved. I sense this as a university professor. Universities are under a lot of financial pressure, and a lot of us are really concerned to make universities function better. But when a minister responsible for colleges and universities who is fairly strong-willed and outspoken in statements made to the press begins to challenge us, we immediately pull back and say, "You are infringing on the autonomy and independence of the universities." We become defensive. We stand up for our turf. We wind up being distracted in dealing with those things instead of getting down to the business of how to educate more effectively the students we have.

The same sort of thing could become a problem in the courts. It has not been a problem in recent years in this province. A decade ago, British Columbia made a major effort to improve the administration of their courts but because they did it through government the judges became hostile and you got more conflict instead of more progress.

One of the ways to do it is to say: "Okay, clean up your own house. You are the ones who are responsible for this. You are the ones who are criticized for it." If you can develop the techniques for this, if you have administrators you can work with, in whom you have confidence in or responsible to you, you can make some progress on it. This has been done in a number of jurisdictions. Alberta is the best example. The Attorney General blamed the judges for what happened. The judges went to him and said, "If you are going to blame us, then give us the chance to do something about it." Within a year, they had reduced delays to such an extent that some judges argued the accused were getting tried too quickly in that province.

Mr. Breithaupt: The only other area is the matter that you deal with on page 6, the executive discretion on appointments. The local registrars in the courts would continue to be appointed by the Lieutenant Governor in Council, and the other subsidiary appointments of registrars, sheriffs, justices of the peace and others would carry on in the practice they now have, which is at least that persons who are known to the ministry may have an edge on some appointments, although by and large any of the people I have dealt with have been quite capable in the tasks they were performing. The appointments have been pretty good ones, whatever the reason might have been for the person being appointed.

You then talk about the Public Service Act, which has control over the appointment of provincial court persons. Presumably, this differential will continue. Perhaps you could expand on why you think that is a particularly poor practice in continuing this traditional Lieutenant Governor in Council pattern, which has been the way things have been done, I presume, in most provinces.

Mr. Baar: It varies from province to province. I guess Nova Scotia is the most notorious for being a place where you cannot get a job anywhere in the courts unless you contact your

local member of the Legislature. It ranges from there to British Columbia--I think it has happened under both parties--where it is exclusively the province of the Public Service Act.

This is one that is really difficult, and this could be dealt with much more effectively if you had some framework other than the departmental framework for administering the courts. If you set up the courts with more independent administration, even if you said, "Let us treat this somewhat the way you might treat a crown corporation or a crown agency with its own personnel system," you would then be in a position to recruit more effectively. As it is now, the basic court employees who are clerical are simply recruited like any other clerical employee.

For example, within the Public Service Act framework when the Ontario health insurance plan and the Ministry of Revenue moved out of Toronto you had several hundred clerical people who were given first crack at jobs in the courts which require much less emphasis on typing skills and more emphasis on being at work every day at a time when the court is open so that you can provide the materials that the court to function. It was quite frustrating to court personnel not to have more flexibility in appointing qualified people, even within the Public Service Act framework.

At the other end of it, you have a situation where appointments are made through the cabinet and through screening that involves members of Parliament and really has not established other kinds of criteria. It would seem the kind of thing that would be valuable, even if change is not made in this, would be to begin to evolve techniques for screening, for processing applicants and so forth.

At Brock University, I teach students in a masters degree program similar to a master of public administration or a master of business administration. An older student who was quite well qualified--she had social work experience, a variety of work experience and was familiar with the courts--learned that there were two vacant positions for justices of the peace in her home area. She said, "What should I do?" I said I really was not sure; she probably should get in touch with her local member of the Legislature. Later, when I tried to get information on this from the ministry, they told me that was probably the soundest advice I could give her.

It strikes me that at least there ought to be a mechanism whereby qualified people can have some place to apply. I mention it in that sense. The only province that still does not require that a provincial court judge be a lawyer is Newfoundland. As the system currently exists, the salaries are so low that most lawyers pay more taxes than they would get in salary. There, when they are recruiting a provincial court judge, they will actually put an advertisement in the newspaper: "Wanted--provincial court judge; apply with qualifications." I have met nonlawyers who serve on that bench who have backgrounds such as a masters in education, some classroom experience and other sorts of things like this, and who appear to be very effective and conscientious in their work.

I would assume there are ways, even within the existing

framework, that you could effectively develop recruitment mechanisms that would let people there know they were rewarded for their qualifications, background and expertise, and did not leave those who are working in the system with the sense that the system worked for those who had political links rather than for those who were there primarily because of their motivation, training and ability.

2:50 p.m.

Mr. Breithaupt: When the Attorney General replies to this recruitment theme, he might also comment on the hiring practices generally. The Mewett report on justices of the peace, as I recall, referred to some of the factors that should be considered on appointments and gave some suggestions. Perhaps in due course we could hear whether any of those suggestions have fought their way, at least peripherally, into this administrative framework we are setting up now. Do any of those qualifications or those themes with respect to appointment appear in this legislation? I would not have thought they would, but they may well have had an influence on some of the considerations.

Mr. Chairman: Excuse me. We have a few more questions, so we can just wait with your answer to that.

Mr. MacQuarrie: I found your brief interesting and constructive. There are aspects of it I do not fully subscribe to.

Mr. Baar: I would be surprised if it was otherwise.

Mr. MacQuarrie: There are two things about the question of judicial control over the administration of the courts that strike me. The first is that we are, in effect, depriving the administration of justice, if you will, of judicial time that is being spent strictly on managerial effort. Consequently, we are losing a bit of time there from the point of view of the time spent on independent decision-making.

Second, you deal with accountability, and some analogies were drawn with the Ombudsman and the rest of it. I do not know how you see it, but what I sort of visualize is that here we have a separate administrative unit all of a sudden being created, a bureaucracy being spawned. As one who sits on the select committee on the Ombudsman, sometimes I get afraid of the rate at which that organization has grown and about the effective control the Legislature has over the costs.

I am certainly a firm believer in an independent judiciary as far as presiding over trials is concerned, in the decision-making process and the rest. As you suggest, there might be more co-operation between the judiciary and the present court administration. But to turn over the responsibility for administration of the courts entirely to the judiciary possibly would create more problems than it would solve. That is my point of view. You might have an opposite point of view.

I wonder if there are any jurisdictions you are aware of where responsibility for the administration of the courts, that is, the day-to-day administrative control of courts, has been totally turned over to the judiciary.

Mr. Baar: I will take these things in the order you made the points. They are very important points, and a lot of judges, as well as others, have articulated them. I think they speak to some of the problems, but also to some of the misconceptions about this.

In terms of judicial time, it is clear there is going to be an increase in the time some judges will be devoting to administration. However, if you set up a framework within which the judiciary as a whole operates, you are doing two things.

First, you are creating some specialization where you will not have judges in local courts having to do as much detailed administration because there will be a judge presiding over a larger number of judges who will be able to take over some of those functions. In areas where there has been some--

Mr. MacQuarrie: Courts tend to get a little bit political, too.

Mr. Baar: I do not have any problem with that; well, I have some problems with it. It is not something that shocks me or anything like this. Part of the problem is that at this stage judges, because they are reticent to entrust certain responsibilities to an official who is not really responsible to them, will sometimes wind up doing administrative tasks that could as easily be done by someone else.

In the summer I worked with Chief Justice Deschênes, I remember him taking time aside to sit down and figure out which judge should be sitting in which city at which time over the next year. I said to myself, can he not get somebody to draft something like that up? Does he not have a research assistant? Does he not have somebody else who is working in the court support staff? He said it was something he had better do himself because of the sensitivity involved in it and because that official was not someone he had appointed or that he was confident would operate fully under his direction. There are a lot of judges who are reticent to delegate administrative tasks, even though this would reduce the amount of time they spend on administration.

Mr. Breithaupt: That particular pastime might well be a good responsibility for him as the senior person who should know qualities and preferences and abilities of certain judges.

Mr. Baar: The point is--

Mr. Breithaupt: Not too much time.

Mr. Baar: Yes. Some of the mechanics of it need not be done by the judges themselves. It is the difference between managing something and then carrying out day-to-day operations. You need to have control over the general policy, the understanding of these things. In a lot of courts those kinds of judgements are very effectively made by court staff.

The problem is the court staff often find themselves sitting in the courthouse. They will sit in the courthouse down here on Queen Street and the judges will be thinking they work for the guys down on King Street and the fellows on King Street say: "They are over there with the judges." The administrators are often caught in the middle.

Mr. McQuarrie: Or they are out at 2 o'clock for a golf game.

Mr. Baar: The next question becomes, how do you enforce that kind of standards on that servicing? The problem is that the Attorney General cannot do that. The newspapers today were all full of criticisms being made by a leader of one of the parties in the Legislature of the comments made by a particular judge. There is no way the Attorney General could either phone him up or publicly chastize him for those remarks.

If you have any kind of responsible system, then it is the judges themselves who should be figuring out how to deal with something like this. I think that is the sort of thing that does not come from discipline. It comes from developing enough education so the judges realize something about what the crime of rape is all about and realize its incidence and so they have more sensitivity and understanding to it. But that requires you to develop educational programs.

You cannot fire a judge; you are stuck with him. The problem is how do they educate themselves to understand things in order to be responsive to changes that occur in society? They are not going to accept the lead of a cabinet minister. They will accept the lead of their colleagues. So you are figuring out how to develop a system that does that. You are not spawning a bureaucracy; the bureaucracy is already there. It is already consolidated under a single assistant deputy minister within the department and it would be a question of shifting the leadership at the top and then developing the techniques for making it work.

Frankly, I see an effective court administrator operating with fewer personnel rather than more. Much as I would like to see my students who are interested in this field succeed professionally and obtain jobs in the field, I suspect that good responsible court administration could reduce the need for a larger number of personnel than now exists in the department.

Again, it would be very difficult for something as sensitive as this to be dealt with by a minister who is seen as someone outside the courts. It is really difficult for him and for his top officials to be able to deal with this as effectively as would occur within a province-wide setup.

Mr. MacQuarrie: Although I have the highest regard for the judiciary, I am inclined to think that effective control over some of their expenditures by an agency such as the ministry is desirable. I think in one of our committees we heard of some of the perks our judges were getting and a desire for more. It is a question of how much to give where and how to control this.

3 p.m.

Mr. Baar: This is one of the reasons the kind of thing that Deschênes talked about was the judicial council, the responsibility within the chief judges of the various courts. An individual judge may see different things he could benefit by, but someone responsible for the courts as a whole is looking at the total work demands that are there and part of what they are trying to do is figure out how to deal with those effectively.

Findings I have seen indicate that the more unified and consolidated a system is, the more priority is given to effective administration and the lower the priority given to perks going to an individual judge. Some of this is based on things I have observed in the United States where there is a great diversity of work going on, but I have seen instances of where a judge who is considered to be rather uninterested in the administration would be elevated to a position of chief judge of a court. His administrator would then show him the various statistics about work load. He would look down there and he would say, "Do you mean my colleague out in this town is taking off at noon every day? I work until five o'clock. Let me get on the phone and give him a call."

The chief judge talks to another judge and says, "How about working harder, putting in more time?" Nobody can say that interferes with the independence of the judiciary. I do not know how you would do it within the present system as effectively and be able to follow through on it.

What I am proposing here is something that many judges support. Some judges oppose it; a lot of them will say, "I do not want some chief judge in my court telling me what to do in my own locality." What I am proposing and supporting is something I think would be better for me as a citizen and as someone who may at various times have to use the courts. I would like to see them being able to work more effectively.

Mr. MacQuarrie: What about other jurisdictions?

Mr. Baar: In this case there have been major changes in the statutes affecting the Supreme Court of Canada and the Federal Court of Canada. These were passed in 1977, at the same time changes were made in the authority of the Auditor General, so now the registrar of the Supreme Court has the status of a deputy minister. He has control over his own budget and can allocate and reallocate without having to go through the Department of Justice. The same sort of thing operates for the Federal Court of Canada. They do not operate as a total system.

Changes have been made in British Columbia, for example, where there is specific authority. It says that in matters of judicial as opposed to court administration, the director of court services is answerable to the Chief Justice.

There are provisions in other provinces that give somewhat more discretion to the judiciary. One of the models that some Canadian judges have referred to is the operation of the federal courts in the United States. I question initially whether these would apply because they have a basically different constitutional system than we have. However, I went back and read some of the history of the operation of the federal courts in the US and I discovered that in the 1920s the administration of the US federal courts was under the responsibility of the Attorney General of the United States and it remained that way.

There were a few radical, rabble-rousing judges who were going around saying that they ought to have control over the courts, and all the respectable judges said that should not be done. Then, all of a sudden, something happened that changed their minds. It was the proposal by President Franklin Roosevelt in 1937 to substantially expand the size of the Supreme Court of the United States--what his opponents called court packing--in order to get that court to make decisions that would support his New Deal legislation after it had been overruling him.

Mr. Breithaupt: Nine old men.

Mr. Baar: They wanted to do something about that. All of a sudden, all these judges who felt the Attorney General could take care of administering their courts began to wonder whether or not there was a better way to do it. Opinion suddenly changed and there was substantial support for a different system of administration with an administrative office that was directed by what is called the Judicial Conference of the United States. Prior to that time, the Judicial Conference of the United States was an advisory body similar to the one in section 93.

After that, I concluded that the differences between American and Canadian courts were not so much a function of the different constitutions as they were a stage in historical development and the fact that in general our courts had not been subject to the kinds of political challenges that had occurred in the US.

It seems to me that we now are changing in Canada. We have a Charter of Rights. In the most sensitive issues, no longer does the federal government or the provincial government have authority. The most sensitive issue is, does any government have authority or is this something that is reserved as a right of the citizen?

Interjection.

Mr. Baar: This is why last year, before the Valente case came up, I talked to one judge who said, "Hey, maybe we could get this Deschênes report enacted through section 11(d) of the

Charter of Rights." I said, "What do you mean?" He said, "There is a provision in there for an independent judiciary." I said, "That is ridiculous. Who could ever argue that section 11(d) would require implementation of this report, no matter how wise I think it is?" Within a matter of a few months, exactly those kinds of questions were raised in litigation.

I think that is a signal. For decades the main thing we argued about is who should be responsible for appointing judges, the feds or the provinces. The whole concern was whose side they would come down on in a major constitutional case. Now we have a Charter of Rights and what is being discussed is the independence of those judges because they are now deciding cases between the government and the people.

This is clearly going to be one of their main activities for the next several years. I do not think the kinds of things I talked about here are going to go away. I do not think you are going to be able to solve them between now and March 7 either. That is why I have simply asked you not to make an immediate judgement, not to preclude what I see as a development that is going to evolve over the next several years, when we are going to be seeing some effort to try to redefine the role of the judiciary.

I think judges are going to take an expanding interest in administration. A number have already done so. We have to leave open the opportunity for that to develop to the extent we can develop a more coherent and effective system as a result. I think we are going to be very much the better for it.

Mr. Chairman: Have you concluded, Mr. MacQuarrie? We have two more questioners and we want the Attorney General to make a response. I will ask the questioners to be brief so that we stay on schedule. Mr. Renwick, you are next.

Mr. Renwick: Mr. Chairman, I appreciate your focusing our attention so early in the consideration of this bill on this principal question, or one of the principal questions, in the bill, that is, the new provision of section 92. I certainly have been wondering for some time whether it is a restatement of an existing situation in Ontario or whether--

Hon. Mr. McMurtry: I should perhaps interject, Mr. Renwick. I am glad you brought this up. Section 92 is a little confusing because it says "new." That is according to drafting parlance. It is new as far as the Courts of Justice Act is concerned. The language contained in section 92 is exactly what is in the present Ministry of the Attorney General Act. From that standpoint, there is nothing new about it. It was felt that what was in the Ministry of the Attorney General Act should be restated in this act.

Mr. Renwick: I appreciate that. I will start again. The principle is a crucial one here, and all I can do is to give my perception of the role between the judiciary and the Attorney General as I have seen it over time.

For practical purposes, up to and including the time of Attorney General Wishart, whatever the principles were, they were basically submerged. The courts had gone on for a long period of time and the relationship between the judiciary and the Ministry of the Attorney General with respect to administration was not a topic that was of great moment. The courts had been functioning that way for some considerable time and there had developed a certain intermingling of administrative responsibility between ministry officials and the judiciary which was generally and basically accepted because the courts were functioning that way.

Nobody raised the question of who had the ultimate responsibility for the administration of the courts, although I would have assumed that people looking at the courts and asking themselves that question would have referred to what the Ministry of the Attorney General Act has undoubtedly said for a long period of time. I appreciate the Attorney General bringing that to my attention.

3:10 pm.

As we moved into the interregnum between Attorney General Wishart and Attorney General McMurtry, when the late Dalton Bales was Attorney General and the question first came up as a matter of significant importance, unfortunately Dalton Bales stumbled on that, and I believe that played a significant part in the short tenure he had as Attorney General. As a result, the government brought in one of its principal fire extinguishers who did nothing about the problem because of the collision which had occurred. When that fire was extinguished, of course, Robert Welch moved on to a number of areas where his capacity as a fire extinguisher is very valuable to the government.

I will be fascinated by the Attorney General's response. It is very interesting that when the present Attorney General came into power he recognized what had happened. The ministry then set out to develop a number of devices to reassert the need for the administration of the courts to be improved over a period of time. It is fascinating, of course, that his original white paper was really modelled on Deschênes; it antedated the Deschênes report.

The great healer, the effluxion of time, now has allowed the Attorney General to revert to the very principle which caused the early demise of Dalton Bales as Attorney General of Ontario.

It has been a fascinating relationship between the judiciary and the Ministry of the Attorney General in trying to solve the problem of the efficient processing of cases through the courts consistent with the concept of justice. But I am inclined therefore to dispute, in the reality of the political process, some historic dichotomy. There has been a sense of an intermingling of relationships in Ontario, which has been very important in the evolution of the system.

At the present time, because of the passage of time, because of the pressure of the need for administration to become important in the courts, the Ministry of the Attorney General and the judiciary have, in a sense, been wrestling with the problem. I do

not have any sense--the Attorney General could tell us, because we do not have any way of knowing--that the chief judges in the courts are hostile to a restatement or to a continuance of this principle.

It may be they are hostile, but I do think it has come up against two simple rules that I have gone by, which are that lawyers as a rule--and I admit the usual odd exception to that--are lousy administrators, because of the nature of the profession on one hand. The second rule, and a corollary to that, is that no lawyer will admit he is not a good administrator.

So you get this strange problem that they then become judges and they still think they are good administrators, when any objective survey of the courts in the province would indicate that by and large, with very rare exceptions, they are lousy administrators.

But with the evolution and the present incumbents in those courts, and the way in which the situation has developed, you have had a different perception of administration. I think the relationship between the judiciary and the Ministry of the Attorney General, by and large, has improved as it has had to focus on the question of administration.

The other device which the ministry came up with to get around this question of a direct confrontation with the judges was to develop the project system. You produced a project in a particular area to improve the administration, such as the unified family court, and that has been a very useful and valuable device.

I just wanted to express my particular perception of what that relationship has been over time. On the other points, which I will certainly look at very carefully as we come through the clause-by-clause discussion of the bill, I substantially agree with a number of the proposals you make.

During our clause-by-clause debate of those particular points, I will certainly be interested, with respect to the assertion of the independence of the judiciary in the range of appointment, removal and retirement of those areas. But this principle question seems to me to be basically a pragmatic one at this point. Unless I am wrong, and the Attorney General can tell me, I think the role of the chief judges in the various courts, which has evolved as this pattern of administration has developed, would lead me to believe they are not opposed to the continuance in Bill 100 of this particular method, if one has to settle the principle.

Being an easy-going person myself, I think I probably would have left it out and let it grow like Topsy, let it develop rather than reasserting the principle. Even with the principle having been asserted, I would be surprised if the Chief Justice of Ontario, the Associate Chief Justice, the Chief Justice of the High Court, the Associate Chief Justice, the chief judge of any of what will be the district courts or the chief judge with respect to the provincial courts--by and large they have co-operated with the ministry in their sense of improving the administration.

I think the ministry has a hell of a long way to go in improving the administration of the courts when you think of the significant, at least casual statistics that we hear of from time to time about the processing of cases through the courts.

I have gone on at a bit of length because I did want to add my nickel's worth to this view of this problem. If you have any information as a result of the work in your courses that you think would be of assistance to the committee on the fundamental question of whatever these rearrangements are that are embodied in this Bill 100, as to how that will improve the processing of cases through the courts, I would be interested to have access to that information, and I am certain some of my colleagues would.

I know some of your students have done studies with respect to particular courts in particular areas as to how long it has taken a case to get from point A to point B to point C, and the ultimate period from the dispute entering the justice system until its actual settlement in a final sense. Some of those figures would be quite shocking to lay people. They are shocking even to a person such as myself who has been removed from the practice of law for a while.

Could I ask the professor if he would comment briefly on my view of history?

Mr. Baar: I will try to talk a little faster than I usually do. Your view of the history was really at the political level in terms of changes in the ministry. From a court administration point of view, the key thing that happened was the Provincial Courts Act--I was going to say 1968 or 1969, one of those years--which shifted from municipal or local administration to province-wide administration of those courts, and that becomes a key element in this history.

I think you can see the effects of it even today, because it is not the Chief Justice of Ontario or the Chief Justice of the High Court who is as concerned with problems of administration, because in every case they deal with, counsel is before them and if a point comes up, if a problem arises, they can ask counsel to research a point to deal with the problem. In a sense, the lawyers become an extension of the court.

3:20 p.m.

At the provincial court level, in family court, in provincial offences court, in criminal division, in civil court, enormous numbers of people are there without lawyers. They are there to deal with problems. There is an important role for staff, whether it is social work, training, probation and so forth. It is in those areas where there is much closer contact between administration and the judges in their adjudicating functions, and I think you will find generally that while chief judges in those courts are supportive of the ministry and have worked with the ministry because they want to improve the courts, a lot of the pressure and the interest in developing independent and responsible court administration has come from those judges in the higher volume courts, in the ones in which they have to deal with

problems where they cannot rely as much on lawyers, where they are not dealing with a smaller number of cases on which they can deliberate over a longer period of time.

This is the key thing historically that has given this issue more visibility and made it something that is of more direct concern. Of course, as a nonlawyer I would agree with you that lawyers do not make good administrators. One of the problems is that nobody has proposed that the administration of courts be taken out of the hands of either the judiciary or of the one ministry of government that is dominated by lawyers.

We are going to have lawyers in any event. I would see an important role for professionally trained court administrators, those who are familiar with that field, and I think they can only be effective when they are in a setting where the judiciary is confident that when questions arise they can have some influence over the direction that those professional administrators take. I think that can only happen when they are responsible directly to the judiciary and they are then in a position where they can operate with somewhat more discretion and develop their abilities and their functions somewhat more fully.

Mr. Gillies: Mr. Renwick asked a lot of the questions I intended to pose to the professor, but I just want to enlarge on it. I found, as Mr. MacQuarrie did, your brief to be very instructive indeed. I do not think there can be much question that our court system and our courts administration is going to evolve partly as a function of the Charter of Rights and Freedoms. I think it has changed and will increasingly change the role of responsible government and its relationship to the courts.

You do mention in your brief that you think this will be an evolutionary change. I would have to think though that in the next while some policy directions will be taken or will have to be taken to start the evolution.

With your knowledge of the courts administration system across Canada, are there some areas in other provinces where there is some movement that we could be emulating? Are there some things that we could be doing now or in the near future that we are not?

Mr. Baar: The kinds of things that I had observed in British Columbia, for example, and there may be some alteration in this due to the changes in direction in government policy, but under both the Social Credit and the New Democratic governments there was a move to involve the judiciary more directly and to recognize in the statutes that they had authority over administrators dealing with matters within their jurisdiction. This is somewhat similar to provisions here.

There was also a move made to allow consultation on budget. There was actually a portion of the budget for the courts which was placed under the control of the Chief Justice there. I was not as sympathetic to that as I would be on some move that would allow some consultation on budget and budgetary needs.

For example, what was recommended on the Deschênes report,

which I think reflected his experience in Quebec, was some notion that the judiciary have an opportunity to see the budget that has been proposed by the ministry, have a chance to comment on it and have an opportunity for their comments to be forwarded to treasury board or, as it would be in Ontario, to Management Board of Cabinet and to the Legislature.

Right now, judges will indicate their concerns, but they do not feel it is appropriate for them to appear before a committee such as yours if they are in a position where their own voice cannot be heard. I would like to see some consultation and decision sharing in matters of budget so there could be some notion as to what their priorities would be in this so that regardless of the outcome of the process you would have a chance to see what their concerns were and how they might differ from the priorities stated by the ministry.

I would see this as a useful step, and I think there are ways in which it could be indicated that that was among the items which perhaps could be considered by the courts advisory council.

In this legislation we are in a position where that could be considered because subsection 93(2) does provide that the advisory committee can consider matters that are appropriate on its own initiative. I think now the legislation is good on that.

I think part of what needs to be done is that some of these suggestions need to be made so the judiciary realises that maybe it ought to start considering how much some of the things they think are valuable would actually cost, so they could also start asking themselves what the tradeoff might be and what their priorities would be, in terms of whether they need to develop the management information system, some statistical system, or whether the emphasis should be on obtaining some computer assistance in some of their case-scheduling mechanisms, or whether priority should be placed on other areas. I think that would force them to consider the needs of the court system as a whole.

I think if they started gaining knowledge of those issues, you would not find the leadership in the judiciary saying the main priority should be increased travel allowances, or a chance to have the government pay for certain other personal things, because they would get a sense of what the total picture looked like.

Mr. Gillies: You mentioned earlier, and we had a bit of levity in the committee about it, the administrative capacity of lawyers. I think if anyone ever had any doubts in that area they should read this morning's Hansard when we were trying to schedule the committee for the next week or so. I guess the question that--

Mr. Breithaupt: I thought the lawyers did rather well.

Mr. Baar: You did a much better job than professors I have known under similar circumstances.

Mr. Gillies: I guess the question that arises out of what you just said is that whether or not the budgetary priorities are going to be set by government or are going to be set by the

judiciary, obviously there will be limits on what is available in terms of funding.

In your experience and in your study of this area, do you think there would be the capacity or the discipline within the judiciary to actually set priorities and discipline itself in a budgetary sense, or would we possibly exacerbate an acrimonious situation between government and the judiciary because of financial demands?

Mr. Baar: There is always the possibility of that. I think there is a better opportunity--they may be sensitive to the problems as a result and be concerned with them. But frankly I do not think the ministry is in a position to exert that kind of discipline. They may want to, but they also do not want to be in a position where they are accused of interfering with the judiciary in its operations.

So, again, you are better off saying: "Okay, you want to be independent. Be independent institutionally and figure out how to deal with the resources you have as an institution."

I think it would contribute to developing that discipline, while I think, given the size of the judicial budget, it would give them some flexibility to allocate towards priorities, which would allow them to begin to meet some of the problems that the judiciary themselves realize will occur here.

This is something that I think is a longer term sort of thing, because this is not the sort of thing that is now handled within a judicial council or within that framework. It is something I would think would really contribute to their effective functioning over the long term. I think there are a number of judges who would see this as a constructive development.

Mr. Gillies: The crux of what I am getting out of your comments really is that section 93 in this act is probably a very positive step, as long as the terms of reference for it are sufficiently broad that the judiciary can assume more responsibility for its own administration.

Mr. Baar: Right, and you have a basis for that in the legislation. Section 94 is one that bothers me because it seems to say, "You can go this far, but you cannot go any further."

I would like to be able to see that at least as the point where, as I mentioned, if a court decides that we really have to take some initiatives to reduce delay, and these may involve the structure of the scheduling system rather than simply which judge sits in which courtroom, that that be something they realize they are authorized to do and they do not feel they have to check back with the ministry before they go ahead and do that. They realize that the statute authorizes them to take an initiative in those kinds of organizational matters.

Mr. Gillies: Thank you, professor.

Mr. Chairman: Thank you. We return to you, minister, and I am sure you have a few comments.

3:30 p.m.

Hon. Mr. McMurtry: Yes. We have a very long and interesting history, and if I were to attempt to indulge myself in the entire history, the evolution, we could be here for many weeks, without any exaggeration. I would like to thank the professor for his important contribution to this debate. I regret I was not here at the outset of your presentation, professor, but I had read it; and I was luncheon speaker at Mr. Walker's conference on domestic violence.

I would like to say at the outset that I think it is important that in this whole evolutionary process we do have academic institutions that have decided to make a specialty in this area. This is something that is relatively new, in the past decade I would think, and they certainly would be a very important part of this evolutionary process so far as it relates to the role of the government and the judiciary in the administration of the courts, particularly with respect to how we implement any changes.

Quite apart from the issue of the judicial independence, there is a very vital issue as to how more effective management techniques are brought to bear. There is one question about which there could be no doubt. Despite any shortage of resources that may be the case in particular areas of the province, we certainly are a long way from making very efficient utilization of our existing resources. When one looks at the actual time that courts are in session throughout this province, one realizes we have a long way to go, regardless of who administers the courts, to provide for more efficient utilization of the existing resources.

This is an issue that has preoccupied the Ministry of the Attorney General for more than a decade now, since the Ontario Law Reform Commission report on the administration of the courts in 1972, and the central west project, which was introduced in 1974-75. Then there is, of course, our famous white paper of 1976, which was a very bold and imaginative approach, saying in effect, "Okay; because of some of the problems, particularly the perception of joint responsibility in relation to the administration of the courts, we will hand it over to the judiciary through a board, a judicial council made of senior judges, with, of course, the allocation of the appropriate civil servant resources and managers to be involved in that."

This certainly put the cat amongst the pigeons, if I might use that expression, and brought the whole issue into focus to an extent which I think had never been achieved prior to that time.

For example, one of the recommendations of the Ontario Law Reform Commission was for the Ministry of the Attorney General to take a greater role in providing for more efficient administration of the courts and, of course, encouraging the use of more modern and up-to-date management techniques.

It is rather interesting because as a practitioner at that time--I was not a member of the Legislature--I can recall

discussing the issue with a number of members of the profession who were concerned about whether the Attorney General, as a major litigant in the courts, was going to have too much control over the administration of the courts, particularly with the perception that somebody in the ministry might be able to have some influence over which judges would hear which cases. This, of course, would have been entirely wrong. In any event, this was one of the debates that my predecessor, Dalton Bales, got caught up in.

It is rather interesting that when the white paper was published and said in effect that maybe we will hand it completely over to the judiciary, the shock reverberations throughout the profession were very considerable. I do not think it is an understatement to say that the profession, through its organizations, was collectively horrified at the proposal simply because the profession recognizes, as has been said on several occasions, that while we have a very distinguished judiciary, it does not necessarily mean a good lawyer or distinguished jurist makes a good administrator. In any event, that provoked a very healthy debate.

The proposals were very seriously resisted by organizations such as the Advocates' Society, which in effect reversed an earlier position and stated that if there was going to be any degree of accountability in relation to the administration of the courts, the responsibility would have to remain with the Ministry of the Attorney General.

Newspapers like the Globe and Mail thundered from their editorial pages at the suggestion that the incumbent Attorney General wanted to undermine his traditional accountability. The Attorney General had always held responsibility for the administration of justice in the province and this was nothing short of an attempt to abdicate a very fundamental, historical responsibility. I mention some of these comments, not to suggest I necessarily agree with them but to provide some of the historical parameters of the debate while it rages.

Interestingly enough, the Deputy Attorney General and I visited Great Britain in January 1977 and met with a number of people involved in the administration of the courts in the United Kingdom. Before going over, we sent our white paper to the Lord Chancellor and asked that his staff might do an analysis of it for him. As many of you know, the position of Lord Chancellor is a very unusual constitutional anomaly in the British system inasmuch as he is the head of the judiciary and a member of the cabinet. Many of his roles would be performed by an Attorney General in the Canadian system.

The Lord Chancellor, Lord Elwyn-Jones, a very distinguished gentleman in the Labour government, was very interested in our proposals. Interestingly enough, he did caution this Attorney General in the area of parliamentary accountability. He obviously felt this very deeply. He said our white paper proposals were interesting, but to the extent that they undermined the traditional accountability of the Attorney General, as he understood it in the Canadian system, which is quite different from the British system, someone in my position might be a little cautious. It was interesting getting advice from that direction.

In any event, we felt the white paper was an important discussion paper and obviously, as I think Professor Baar has acknowledged, helped to inspire my good friend Jules Deschênes in his work for the Canadian Judicial Council. While we indicated we were not, at least immediately, pushing ahead with the white paper, we did want to encourage the judiciary to become more directly involved in the administration of the courts. As a result, the Ontario Courts Advisory Council was created on an informal basis, presided over by the Chief Justice of Ontario. The Bench and Bar Council was also created, to be presided over by the Chief Justice of Ontario, made up of broad representation from the judiciary, the practising profession and the ministry. This body, on a regular basis, has addressed many of the administrative issues and problems of our courts.

3:40 p.m.

I might say that our present Chief Justice--as did his two predecessors during my tenure, but since he has been there the longest period of time, I have had lengthy experience of working with Chief Justice Howland--has demonstrated an enormous interest in the functioning of the courts generally which, given his moral authority as chief justice, is very important. It has been a very positive development. With his advisory body, and with the bench and bar committee, it is fair to say that in the last five or six years at least the judges have been more involved in this province in issues related to courts administration than ever before in the history of our province.

The courts administration section that is before you reflects some of these developments, and section 92 is just a repetition of what is already in the law of this province. It is just a restatement.

Section 93 for the first time gives an Ontario Courts Advisory Council the statutory authority to consider any matter relating to the administration of justice. Those are matters referred to it by the Attorney General or that it considers appropriate on its own initiative. This is a very significant development.

Section 94 clarifies the practice and has been well received by the judiciary because it codifies what has long been the practice, and that is the authority to assign judicial duties in relation to preparation of trial lists, and section 95. Section 96 codifies the practice which we have attempted to adopt in relation to the direction of court staff during any time that a court is in session.

It is important to note that this is part of an evolution that has taken place over a relatively short period of time when one looks at the history of the administration of justice in this province. This is not intended to be the last word, but it is a very important and progressive step which recognizes, as we do in other sections of the legislation, the fundamental importance of the independence of the judiciary, and maintaining that independence--the fundamental and very basic concept of accountability for the administration of justice.

When we look to other experiences, we make a grave mistake if we become too preoccupied with the experience in the United States, which has developed in a much different atmosphere. When one looks to the experience in the United Kingdom, for example, where they have been reluctant to codify any of these various responsibilities, we see some useful guidance. It is not that we do not receive some useful guidance from the United States but, quite frankly, as I have looked at the American system, the Canadian-British tradition is very different in a host of ways. I could literally talk for days about my own experiences of looking at the US experience. We have to put all of this into perspective.

The truth of the matter is that there are many subtle dimensions in respect to the relationship between the Attorney General and his ministry and the courts, relationships which are very difficult to codify although in the view of some they would like to see this greater codification.

One of the reasons it is obviously difficult to codify in legislation is that there are so many subtle relationships which you might say are based to a great extent on mutual trust and confidence, as any human relationship must ultimately be if there is going to be any degree of success. The interaction between the Ministry of the Attorney General and the judiciary, as I say, happens at many different levels, and a rigid demarcation is really impossible. It is the nature of the dynamic of the ongoing relationship that is going to result in improvements that must be found for a more effective administration of the courts.

We have for the first time given the Ontario Courts Advisory Council a very significant statutory role. There is nothing in the British Columbia experience that impresses us at all. I think we have gone farther down this road than British Columbia. The consultation that takes place between the ministry and the senior members of the judiciary on a whole host of matters on a day-to-day basis includes consultation with respect to budgetary matters.

I reiterate that while one recognizes this whole complex issue is still in a state of evolution, I think we have learned a great deal in recent years--the judiciary, the senior members thereof and the Ministry of the Attorney General--about our respective roles. While we attempt in every way reasonably possible to respect the vital importance of the independence of the judiciary, I think at the same time there has developed among many of the senior judiciary an increasing awareness of the importance of parliamentary accountability for the administration of justice.

There is a further dimension, one that I discussed with Mr. Jules Deschênes, which, given their particular problems in Quebec, he perhaps had some difficulty understanding and which does not appear to be really reflected, as I recall, in his report, and that is the importance of avoiding the involvement of the judiciary in the political arena. I am talking about public disputes, whether they be over budgets or over other matters, because while many of our judges would perhaps like to enter the public arena and debate from public platforms the need for higher

levels of compensation and greater resources, I think the majority of the judiciary recognize that there are some very significant risks as well to the administration of the judiciary. The public, if such a thing as public accountability is going to be maintained, will also wish to discuss a number of sensitive areas that quite frankly relate to the utilization of our courts.

Therefore, I think we have to be very cautious about the extent to which we encourage the judiciary to become embroiled in the political arena. When you are dealing with the administration of the courts, you are dealing with problems that, as we all know when we discuss these over the years in this justice committee, have so many human dimensions; dimensions that will continue to challenge the most capable court administrator you can train, Professor Baar, because you are dealing with a system that really is very vulnerable to human frailty of one kind or another. So it is not a question of pointing a finger and saying it is the lawyers or the judges or the ministry or anybody else who is responsible for problems that we have in the administration of justice. It is a collective responsibility.

3:50 p.m.

We are not going to make improvements until we convince more people than we have in the system that there is a collective responsibility here. One segment of the administration of justice, whether it be the judiciary, the Ministry of the Attorney General or the profession as a whole, is not going to solve these problems unless we maintain this very healthy interaction, which we have attempted to develop over the years.

I am not suggesting, coming back where we started from, that the white paper on courts administration was not an important document. I am not suggesting that at some time in the history of this province, perhaps sooner than later, the fundamental recommendations in that paper would not be appropriate to the administration of justice in this province. I am not saying that our white paper is buried, because obviously there are many aspects of this legislation that reflect some of the principles in the white paper and it has already been stated that it has encouraged a lot of dialogue with respect to judicial independence in the context of courts administration.

I am simply of the view that before we go the total route as suggested in our white paper, at the very least we need to allow the sort of evolutionary process to work for a little longer, as people become more familiar with their roles. Professor Baar did touch on one of these aspects, which is, of course, the role of the individual judge.

There is a very strong tradition of judicial independence, not only in relation to government, as there should be, but also in relation to other judges. In other words, there is a strong tradition of judicial independence when it comes to the extent to which the judiciary in our province wished to give the senior members of the judiciary the same degree of authority, for example, that we see in many of the states in the United States.

That is only one aspect that I think the professor touched on, which is the significantly different tradition in the United States, as I found in my discussions with some of the senior members of the judiciary there, who tend to run their courts a little more like a large manufacturing concern where the level of production is all-important.

Those are some rather rambling comments in a very complex area. There are other aspects of Professor Baar's very interesting submission which, quite frankly, I do not think I have the time to deal with now. Certainly these will be debated and discussed. Speaking very personally, professor, I want to say on behalf of the ministry that we are very much obliged, very pleased and gratified by your continuing interest in these matters, which is totally understandable from our point of view.

Mr. Chairman: Thank you for your response. Thank you very much, professor, for being here with us this afternoon. We certainly all appreciate it and we all learned something.

Mr. Baar: Thank you.

HURON COUNTY LAW ASSOCIATION

Mr. Chairman: Next we have Mr. Dan Murphy, QC, past president of the Huron County Law Association; exhibit 16.

Mr. Murphy: Mr. Chairman, Attorney General and members of the committee, first of all, our president, Peter Raymond, was not able to be here today. If my comments are somewhat rambling, I apologize, but I will try to be as concise as possible.

Maybe I should introduce myself fully because that does have something to do with what I have to say. I practise law in Goderich, Ontario. It is the county town of Huron county. There are five towns in that county with a population of about 50,000. The population has changed little in the last 25 years. I happen to be the immediate past president of our association and I am also a bencher of the Law Society of Upper Canada.

I would just like to make some brief general remarks before I discuss the very short brief that was prepared in connection with the specific amendments. You will see that the preamble says, "The members of the Huron County Law Association object in principle to the scope of this act as to its intent to regionalize or centralize the administration of the justice system."

This is a concern in our part of the province, and I am sure it is a concern in most small counties. We do not have high-volume courts. The Attorney General referred to the statistics, which I have seen also, and sometimes they are kind of shocking. I think I should say that I have practised in the courts for close to 30 years and the statistics speak for themselves.

To some extent they may be misleading because of the cost of going to court today, because of the pretrials and the pressure on everybody to settle cases, which I think is a good thing. As a

result, the court may open at 10 in the morning and you spend the day trying to settle the matter; or maybe the court sat for an hour and the statistics show the court sat for only an hour, but the judge would gladly have sat all day.

I firmly believe lawyers and their clients, with the assistance of a judge, can come to a much better result than the hammer of the judge who has to decide who is right or wrong in black and white. There is certainly a tendency, and I am sure it is encouraged, that matters be settled and not proceed through the courts.

I believe all of us would agree that at least one of the functions of the courts is to serve the public. It is certainly one of the functions of the judges and it is a prime function of a lawyer. Let me say this: The public is not being served as well in Huron county today, as far as the number of courts and judges is concerned, as it was served when I graduated. I am not suggesting for one moment that we turn the clock back. The administration of justice is expensive and obviously there had to be some rationalization of services, but I would like to give you an example.

When I first graduated, we had a full-time county court judge in Huron county, a full-time provincial court judge and a full-time family court judge. Just let me take a moment to explain that. Basically, the provincial court judge handled the criminal and family law work; the county court judge handled the criminal work, the family law work at his level and all the civil work. So in effect you had what might be described as two full-time judges.

4 p.m.

As a result of the new provincial judges act, what has occurred is this, and let me deal with the provincial judges act for a moment. We have a full-time provincial court judge, but he sits one day a week in Goderich, every second week in Wingham and every second week in Exeter. It is not full-time for him, and because it is not, he spends two days a week helping in Chatham so that his schedule is made virtually full-time.

That has occurred because he does not do the family law work any more, and the civil jurisdiction he used to do--careless driving, etc., is now done by a justice of the peace. That JP is full-time and does live in our county. We are concerned that down the road with the provincial courts, civil division, with the jurisdiction of \$3,000 or \$3,500, we obviously would not have a full-time person in our county. It would never justify it and no one would suggest that it should justify it.

As far as the family court is concerned, our family court is now served by London. I do not want to say for one moment that those judges have not co-operated with us--they have--but they come to Huron county approximately twice a month. I will just mention one provision of the Family Law Reform Act. We act for the children's aid society. When we apprehend a child, that child must be brought before a court within five days. For close to two years we were driving to London, 60 miles for a five-minute hearing.

About four or five months ago we were able to convince the powers that be to allow Judge Cochran, who is our provincial court judge, criminal division, to have jurisdiction to do those hearings to save that trip to London. I guess what I am saying by summing up, speaking for our area--and I know from discussing this matter at meetings of the county and district presidents--I do not know whether it is in this act, but quite frankly the act we are working from in Goderich is this one, and this one has been changed slightly, including the numbers we changed last night.

I am going to deal with these amendments in a moment, but I think you will see from the amendments we are suggesting that we are trying to see to it that we do not end up with all our judges living in London and travelling to Goderich 60 miles away to carry on the judicial duties in Goderich.

The Attorney General may remember that about five or six years ago a committee was set up to advise on sittings. I am not sure if it was the Chief Justice or the Chief Justice of the High Court. There were members of the Advocates' Society, the Canadian bar, etc., on that committee. It is interesting that nobody from outside Toronto was on that committee. They recommended that certain sittings be abandoned, including Goderich. Thank God that did not go any further. You will see some reference in our amendments to that.

I am assuming the Attorney General would have jurisdiction under that act to make a joint appointment. I do not know but I am assuming he could. Just in conclusion of my introductory remarks, it is kind of interesting--and I will try to be candid--when I first went to Huron county, quite frankly, the county court judge's job was not a full-time job. It was not busy enough. Today it is a full-time job. It does all the civil work and it does all the criminal work. I do not have to tell you about the increase in family law work. Today it is a full-time job.

If a provincial court judge sitting in Goderich had jurisdiction to do the criminal work, the family work and the civil jurisdiction up to \$3,000, that would be a full-time job. I will say quite candidly as to the family law itself, at the provincial level we could not justify having a full-time judge in our county. I do not believe we could justify having a full-time judge for the criminal unless he left the county and helped out in other areas. As far as civil jurisdiction is concerned, that would not justify itself either. But I guess if a county court judge exercises that triple jurisdiction, one wonders why a properly trained lawyer could not handle that. It would be full-time and the statistics would then show that man was sitting virtually five days a week.

Those are some remarks. It may be what I have just said might be an answer to some of the amendments we are suggesting. Perhaps I could just go through the amendments briefly. Subsection 14(3) is the sittings of the Supreme Court. It now says, "At least two sittings of the High Court shall be held in each year in every county and district, but when the trial list for a sitting of the High Court does not have a sufficient number of cases to justify a separate sitting, the sitting may be held in an adjacent county or district."

We are very wary of that provision. Again, I want to be very candid. In Huron county, we have had sittings where there were no cases to be tried. What we have tried to do and what we have done is co-operate with the trial co-ordinator to try to tell her well ahead that we believe these cases are all going to be settled. We try to tell them not to send a judge up to, say, Goderich to start on Monday morning because there will be nothing for him to do.

Second, we have also said we believe he will be here only three days, so it would be best to try to arrange something for him to do on Thursday and Friday. Sometimes a case gets settled and there is no work for him on Tuesday. That happens whether it is in Stratford, London or Goderich. We are very apprehensive. I am certain that many judges would prefer to try cases in London or Toronto. If there is one case on our Supreme Court list, we are concerned that the case would be put in London or in Stratford.

I have clients who would have to travel well over 100 miles to either of those courts. It seems to me that section is wide enough to do just exactly that. Our law association, and I am sure it is the same with most small law associations, is very apprehensive about that.

Our firm practises in Middlesex, Perth, Grey and Huron. I am not convinced that by getting all these cases on one list that the court will be any more efficient or that it will try any more cases. I have been in the city of London when lists folded and the super administrator tried to get somebody on at two o'clock in the afternoon and could not do it. That is a concern. You will notice that our amendment says, "At least two sittings of a high court should be held in each year in every county and district except if at any particular sittings there are no matters to be heard...."

In passing, I might say that when I went to Huron county, there were four sittings a year in that county. Now there are two. The two sittings are each for two weeks. I really think it was much better before when we had four sittings of a week each, although I must concede that with the two two-week sittings it does allow the court administrator, if there are no cases to try or not sufficient cases to try, to put that judge someplace else for another week. So maybe from an administrative point of view that is preferable. We are not complaining. I just mention that in passing.

On clause 26(2)(c), the act I have before me has been changed somewhat from the previous drafts. I might refer you to subsection 27(3) which says, "For the purposes of arranging the sittings of the district court and considering matters relating to the court and the judges, the chief judge shall convene a meeting of the judges of each region at least once every year." I take it that the purpose of clause 26(2)(c) is to name the regions. I would like to make one observation.

Attached to this brief are the present regions. You will see that in our region there are 10 counties, stretching from Windsor to Bruce, to the north in any event. Our recommendation is that those regions be not more than five counties, for this reason. It

depends what this annual meeting is going to do. If it is really going to look at the work that is to be done in an area and look at judges being on a mini circuit, that does not work with a large region. It would work with a region of, say, five counties where a judge might say: "I am not quite busy enough. I can go here."

4:10 p.m.

I do not think you are going to get judges to travel long distances. I suppose that does not directly affect the Huron County Law Association, but it is our observation at least that for those annual meetings to be effective it might be better if the number of counties were reduced. I must say that--I am not sure whether it was the blue or the red draft--if someone had told us that there was going to be some super senior judge in London who was going to be in charge of some 20 counties--that was changed, I am told. I do not know the reason for the existence of 27(3) but I am told it is to try and organize the courts so everyone is kept busy.

The suggested subsection 27(5) requires that a judge assigned to a county or district under subsection 2 shall reside in that county or district. Before someone tells me they do not have to reside in the county or district now, I agree with that. They do not. It has been traditional.

I will be very candid. There is a suggestion that when our present county court judge retires these appointments will be made on a regional basis. I might as well be perfectly honest with you. Not all, but many appointments come from cities. Judges do not like to move, and a judge appointed to our district may decide to live in London. We are concerned, when we speak about efficiency in administration and look at these statistics, that they will look at Huron county and say, "They do not need a full-time judge," and the judge will end up living in London. Then the service deteriorates.

On subsection 27(6), I do not know whether this was an oversight, but I should refer the committee to subsection 28(1):

"The senior judge of a county or district shall, subject to the authority of a chief judge, direct and supervise the sittings of the court in the county or district and the assignment of the judicial duties of the court in the county or district."

On a quick review of this act, I could not see there was any reference to what I would call the single county judge, where you have a single judge in a county. I hope we are not being overly sensitive, but, again, we had heard, rightly or wrongly, that our lists might be administered from London. We want to make it absolutely crystal clear that the judge in the county or district is the person who has the supervision and direction over the sittings of the court and not someone living outside the county.

Proposed subsection 67(3) is in connection with the provincial judge. You will see we are requesting that at least one judge of the provincial court shall be assigned by the chief judge

to each county and district and shall reside in such county or district.

You will note we did not ask for a similar amendment as far as the family court judge is concerned because I can see that we do not have a full-time one now. We could not justify that.

In conclusion, what we really believe is most efficient would be a joint appointment where one judge at the provincial level with a jurisdiction to do the family law, the criminal law and, if you saw fit, the civil jurisdiction to \$3,000.

I do not think I can say anything more that might be helpful except maybe just this in conclusion. We are very wary that if there is a lot of discretion left in this act to the judiciary and others, that we may lose our sittings at the county court level, the Supreme Court and the provincial levels. When you look at statistics, it is very easy to say: "They do not need a full-time anything. Ship them down to Perth and we will be able to have a man work five days a week, or get them down to London."

We do not think that is necessary. We think a system can be devised that is efficient--the administration of justice is expensive--but whereby the public are served. It is very important that we not lose the county tradition. I know there has been a lot of flak over regional government and things like that.

As far as the public is concerned--I am sure the Attorney General would agree with me--the county law associations have helped. In an area like ours, the overwhelming majority of lawyers are looked up to and well respected. They are leaders in the community, not just in the courts.

There is an extension of that. I will be perfectly honest with you. It is important to have a county court judge living in the county. It is important to have a provincial court judge living in the county. Those are the people who come out and speak to service clubs. Those are the people the public see and they are respected. When the public respects the administration of justice, it respects the law.

Hon. Mr. McMurtry: Thank you very much, Mr. Murphy. I have not seen this submission before today.

Mr. Murphy: We had to change all the numbers, so it was late getting out.

Hon. Mr. McMurtry: I just mean I have not had a great deal of time to reflect on the particulars. I certainly have great sympathy with what you have said in your general propositions. I do not have any difficulty with them. Given the nature of the consultation process that has gone on with the members of the judiciary, I am in a difficult position as far as making any specific commitments at this time is concerned, other than to indicate I think there is a great deal of merit in this submission.

I will deal briefly with the five proposed amendments. When the court wants to maximize its efficiency, as you have pointed

out, when it does not have a sufficient number of cases to justify a separate sitting, there is no question there is an intention to maximize the time of the particular judge.

I do not quarrel with the principle of respecting the important traditions of sittings in specific counties or districts. As long as there is one case to be heard, I do not worry about the fact that a judge will travel to Goderich just to hear the one case. I think the presence of the judiciary, whether at a Supreme Court sitting or as the full-time resident judge of the county court or the provincial court, is an important tradition.

I agree with your comments, which relate very much to respect for the administration of justice in the general area. It should not simply be measured on the basis of efficiency.

We will certainly review that, together with the proposed amendment to clause 26(2)(c). The difficulty is that this is a new concept that has developed with the county or district court judges, as they are going to be called.

They are basically saying, "We think we can create a mini-circuit system in order to relieve those parts of the province where you have adjoining counties with very different work loads." Whether it should be five counties or 10 counties is something that will again require some consultation with the district court judges who are trying to work out this concept, which is still in a developmental stage, as to what they think is in the interests of the administration of justice.

4:20 p.m.

The subsection 27(5) you suggest says, "A judge assigned to a county or district under subsection (2) shall reside in that county or district." I think only the federal government can pass such legislation. It is my understanding there is a section to that effect in the federal Judges Act. I know I have had correspondence with the present Minister of Justice strongly supporting the concept of the judge residing in that county or district.

Mr. Murphy: Am I not correct that in the county court judges act there is a similar provision? It says, "He shall live in the county or district," but "district" is capitalized and I think it means the larger district.

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: It means one of the traditional northern Ontario districts.

Mr. Murphy: No, it is difficult. I think it refers to this district--these districts.

Mr. Breithaupt: As opposed to the districts of the north.

Mr. Murphy: That is what I believe.

Mr. Breithaupt: That is what I thought "the county or district" meant. It meant the equivalents rather than what anybody else would define as a grouping. Am I not correct in that?

Mr. Murphy: You would have to read it very carefully. As a matter of fact, when you read--

Hon. Mr. McMurtry: I know we have had correspondence with the Minister of Justice. He has acknowledged that a judge assigned to a specific county or district should reside in that county or district.

We are dealing with a situation of complementary legislation. I am not so sure that I personally understand all the dimensions of it. Perhaps Mr. Douglas Beecroft, who is beside me and who is one of the architects of this legislation, could enlighten both of us as to how we accomplish the goal that we both agree is the appropriate goal.

Mr. Breithaupt: Could he also speak to the point of definition that has been raised? I would have presumed the word "district," as it has traditionally appeared, has meant what is equivalent to a county in the northern part of the province, and not somebody's reorganizational grouping of a thing we now call a district. I believe it has been the traditional district of Kenora, or district of Haliburton, or whatever. Do you think that is correct?

Mr. Beecroft: Subsection 4(2) of the existing County Judges Act says, "A judge appointed for the county and district courts of the counties and districts of Ontario"--in other words, this is a judge who is appointed for the whole province and not just a specific county--"shall reside in the county court district." A county court district is composed of a number of counties; in fact, as you have indicated, it could be 10 counties.

But federal legislation, the Judges Act, provides that a judge of a county court shall reside in the county and that a judge appointed for the counties and districts shall reside in the county court district.

The Courts of Justice Act changes that somewhat by indicating that in subsection 27(2) there must be at least one judge assigned to each county. So I anticipate that when the federal amendments that are necessary to implement the district court of Ontario are made, the logical thing for the federal government to do would be to say that a judge shall reside in the county to which he is assigned. It is in the federal government's interest.

Mr. Murphy: I guess what was concerning us was that the thrust of this act is to have a judge appointed for the province as opposed to a judge for Huron county or district or region. That is the thrust of the Courts of Justice Act, or appears to be the thrust of the act. I guess we were concerned that the federal complementary legislation might envisage a judge being appointed for a region or district--small "d"--and that the result would be, because there was some discussion about it, that this kind of mini

regional court would operate out of London and everybody would flow from there.

Mr. Beecroft: But you see that subsection 27(2) of the Courts of Justice Act clearly guarantees that at least one judge of the district court shall be assigned to each county.

Mr. Murphy: It says "assigned," but that judge could live in London.

Mr. Beecroft: That is right, but the residence would be dealt with in the federal Judges Act. It is in the obvious interest of the federal government to require a judge to reside in the county to which he is assigned because the federal government pays the travelling expenses of that judge.

Mr. Murphy: My only point was that there is a provision in the present County Judges Act--

Mr. Beecroft: But it only deals with judges appointed for the province.

Mr. Murphy: But we were assuming, maybe wrongly so, that when this act is passed, judges would be appointed for the province and assigned to a county.

Mr. Beecroft: That is right.

Mr. Murphy: We were afraid he might not have to live in that county.

Mr. Breithaupt: At the present time, for the formality of an appointment is a judge now appointed for a county and also made a province-wide appointment so that the person can move from A to B? What is the formal sequence of the appointment now?

Mr. Beecroft: There are two different types of appointments. Some judges are appointed for a specific county court; other judges are appointed for all of the county courts.

Mr. MacQuarrie: At large.

Mr. Beecroft: That is right.

Mr. Breithaupt: But still in fact assigned or resident or mostly used in--

Mr. Beecroft: That is right. The chief judge essentially decides. For the judges who are appointed for all of the county courts, the chief judge has some discretion to move those judges around, depending on work load requirements.

Mr. Breithaupt: But if the judge appointed to the county of Perth, shall we say, then chooses to move or chooses to co-operate--

Mr. Beecroft: He cannot be forced to move.

Mr. Breithaupt: --or whatever, then that person could say, "Anything that happens within the county I will attend to, but not otherwise"?

Mr. Beecroft: That is correct. He has the power, because of the provisions of the County Judges Act, to sit elsewhere; but a judge who is appointed for one county court cannot be forced to sit outside that county.

Mr. Breithaupt: That would not help in sharing the load at all if the attitude were that way. I trust that this rarely happens.

Mr. Beecroft: That is right. One of the purposes of the district court of Ontario concept is to have all of the judges appointed in future for the whole province so there would be flexibility in assigning judges to the areas that have the greater work loads.

Mr. Breithaupt: That appointment could be for the province, and he could be assigned more particularly to the county of Huron.

Mr. Beecroft: That is right. The assignment is done by the chief judge.

Hon. Mr. McMurtry: You had better be careful that you do not have the wrong wording in the patent. I know that chief judges over the years have had a little bit of difficulty in moving judges from one county to another to help with the increased work load because of the words in the patent.

Mr. Breithaupt: That is what I was presuming.

Hon. Mr. McMurtry: So if you use the words, for example, "and particularly assigned" to a specific county, you would get back the old problem. But as I understand it, Mr. Beecroft--you of course can correct me if I am mistaken--we do not have any constitutional authority to require in our legislation that a federally appointed judge reside in a specific area. That has been my understanding.

Mr. Beecroft: I think that is (inaudible) because there is a clear statement in federal legislation, and obviously in the event of conflict that would prevail. So the Attorney General has written to Mr. MacGuigan and, as he indicated, he did strongly put forward the idea that a judge of the district court should be required to reside in the county to which he is assigned.

Mr. MacQuarrie: I have one question for Mr. Beecroft when we are dealing with constitutionality. It is rather extraneous to the present discussion. Does the County Judges Act still contain a provision that a county judge may be removed at the pleasure of the Lieutenant Governor in Council?

Mr. Beecroft: No, it does not.

Mr. MacQuarrie: When did that go by the board?

Mr. Beecroft: I do not know. I think it must have been some time ago. I have not seen it since I went to law school.

4:30 p.m.

Mr. MacQuarrie: I remember having encountered that question from some of the learned members of the Law Society of Upper Canada in the course of an exam. Having come out of the justice building, with the judge's office just down the hall, it came as a surprise to me to find the statute provided that. It is no longer in it.

Mr. Beecroft: No.

Mr. MacQuarrie: All right.

Mr. Beecroft: It is certainly not in the Courts of Justice Act.

Hon. Mr. McMurtry: I am not sure how we are resolving this other than to seek some clarification from the federal government, because certainly it has indicated it agrees with this.

Mr. Murphy: I think we will write the federal minister, Mr. McGuigan, also, point out what occurred here and make sure that occurs.

Mr. Elston: The provincial court appointments would be different. There would be an authority there to insist upon someone being resident or otherwise.

Hon. Mr. McMurtry: Yes.

Mr. Elston: What about the question Mr. Murphy asked earlier about the possibility of appointing someone to handle a joint jurisdiction as a provincial court judge?

Hon. Mr. McMurtry: We are going to get to that.

Mr. Elston: Sorry; I thought you were about to terminate your discussion. I did not want you to pass over that one.

Hon. Mr. McMurtry: As to the question you raise over subsection 27(6), "A judge assigned to a county or district under subsection 2 shall have general supervision and direction over the sittings of the court," we will clarify that to make sure there can be no misunderstanding in a single-judge county. Obviously, they would be supervising their own work. We will make a clarification to remove any possible doubt.

With respect to subsection 67(3), "At least one judge of the provincial court shall be assigned by the chief judge to each county and district and shall reside in such county or district," in principle I do not have any problem with that. But we will have to consult with the chief judge to see what the present allocation is.

On the issue of joint appointments, we have people in other

parts of the province who as you well know exercise on a regular basis both the criminal and family court jurisdiction. This is an area of some controversy as to the extent to which this should be allowed to happen.

The belief is, and I think it is quite justified, that because of the increased level of specialization, particularly in relation to family law matters with the new legislation that has been passed in recent years, in the public interest it is felt by most members of the family court bench that to discharge their responsibilities effectively they should specialize in these matters that are dealt with by the family court as opposed to exercising both jurisdictions.

That is not to say judges who currently exercise both jurisdictions are not quite capable of discharging their responsibilities properly. But we will have to get some sort of overview as to what the implications of that will be. In principle, I do not have any difficulty.

Mr. Murphy: I wonder if I could make an observation that might be helpful. I feel a little uncomfortable with what we suggest in subsection 67(3). I frankly do not think there is probably enough work in our county for a provincial court judge, criminal division. I would not suggest there is. That is why the suggestion came forward about a joint appointment.

What is occurring in our county, and I am sure it is occurring in other counties, is that the children's aid society work is being done before the family court as it must be. As you know, in many of the other sections there is joint jurisdiction; you can go to the family court or you can go to the county court.

A great majority of lawyers in our county go to the county court. Why? Because they can get on there every week; they can get on there in the middle of the week. Family court only sits twice a month; so there are virtually no matters coming before the family court. I believe more should come before the family court, but there are only two sittings a month.

On the last question of specialization, the county court judge exercises criminal, civil and family court jurisdiction, and one would wonder whether if the proper appointment were made that could not happen at the provincial court level.

Hon. Mr. McMurtry: I agree with what you say. A few years ago I made the proposal that it might be a good thing, quite apart from the joint responsibility on a day-to-day basis, for provincial court judges to move from one court to another from time to time, particularly in centres where it is practical to do so, just to have that variety of experience that other judges have; even sitting in provincial civil court and what not. To date that has been resisted fairly strongly by the judges who sit in either criminal or family provincial court.

I always thought it would be a good thing for them to have that different experience, a change of experience from time to time in everybody's interest.

Mr. Breithaupt: Even within a circuit of three smaller counties, one could have one provincial judge resident in each county and on circuit in the other two; that is, one family, one civil and one dealing with criminal matters and operating in that kind of pattern on a circuit, and yet a resident person who could attend to other things as may be otherwise required. One would have the benefit of the expertise of the person doing one theme full time, but the person could also be doing it in three locations--a variety of combinations could perhaps develop.

Mr. Murphy: There is one difficulty of the circuit. I suppose it is great for lawyers to have different judges occasionally, but particularly in the winter a lot of judges do not want to drive. These are relatively long distances. There would be winter driving, hotels and what have you; and then you come up and the case folds. The circuits were supported by the bar in theory, they were certainly supported by the Advocates' Society, but in practice they may not work as well as we would hope.

Hon. Mr. McMurtry: We will certainly look at these things. The only other point I was going to make was that, as you may appreciate in some of these matters, particularly the latter point, some of the administrative challenges are not inconsiderable. The principal one of maintaining that presence is certainly desirable, and to the extent that it can be accomplished administratively we will certainly take a good look at it.

BARRY PROUSE

Mr. Chairman: The fourth witness is Mr. Barry Prouse, a court reporter from Ottawa. I believe this will be an oral presentation.

Mr. Prouse: Yes.

Gentlemen, I am Barry Prouse, a court reporter working out of Ottawa at the present time. I appear before you today in my personal capacity as a certified freelance court reporter in this province with some 20 years' experience. I have been an avid observer and a critic, I might say, of the position of special examiner.

Mr. Breithaupt: Do we have a written presentation, Mr. Chairman?

Mr. Prouse: I will submit one later.

4:40 p.m.

The Ministry of the Attorney General has recognized over the years, more particularly, I think, in 1978, that a review of special examiners and their relationship with court reporters was necessary. The ministry appointed a Mr. Mendel Green, who issued a report. Furthermore, Mr. Walter Williston recommended proposed rule changes some time ago; we had information on that about three or four years ago.

Problems and inconsistencies in the field of freelance court reporting related to examinations for discovery are not unique to Ontario and have resulted in machinery being put in place in other jurisdictions to lessen direct government involvement. Those jurisdictions include British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, the Maritimes and the United States. Freelance reporters in those provinces and in the United States are permitted to administer oaths and offer their services to the general public and the legal profession.

There are obvious advantages to the public of this province and other jurisdictions in having available a professional contingent of personnel to be able to freely compete, which will ultimately have the following effects--

Hon. Mr. McMurtry: Mr. Prouse, I wonder if I may just interject as it may be of assistance to you. As I understand it, this has to be dealt with by the rules, and I am advised that the rules committee has approved the principle of the utilization of freelance court reporters for examinations for discovery on consent. That will be part of the new rules.

Mr. Prouse: Yes. My submission is that it should become a part of the act, if that is possible, because rules can be changed by the rules committee from time to time, but an act cannot. That was the advice given to me.

Hon. Mr. McMurtry: An act can be changed, but not as quickly.

Mr. Prouse: But not as quickly, that is right. Should I go on, sir?

Hon. Mr. McMurtry: Yes.

Mr. Prouse: This will ultimately have the following effects: (1) higher standards through professional associations; (2) a lowering of the cost to the parties and the public in general; (3) the maintenance of neutrality of government in the reporting business; and (4) end the protection and subsidization of special examiners, that they should not have captive consumers.

The aforementioned effects can do nothing but enhance the administration of justice in the province. Therefore, I recommend --and I refer to subsection 105(1), and it affects section 106 of the new proposed act--that the Courts of Justice Act stipulate that an examination for discovery may be conducted by any qualified court reporter and that such court reporter may issue appointments for such examinations for discovery and be deemed a commissioner for the giving of oaths for such purpose. I think it is dangerous to say "any person," and I will explain why later on; I use the words "any person" because I understand the new rules may read "any person agreed to."

In my opinion, there is now no real need for the existence of the so-called official examiner, since historically it has been the reporter who accepts the responsibility for accuracy and timely preparation of transcripts; in fact, it is the reporter's duty to ensure that the oath has been given.

I would like to point out an experience I have had in Toronto where the examiner swears witnesses as people come through the door. There is a standing joke in Toronto that he has sworn in the cleaning lady a number of times.

Rulings on evidence should not be made by an examiner, since not one examiner in this province can be considered qualified. There is no examiner, in my opinion, who has the legal training. Instead, any objection should be recorded and determined by a judge on motion or at trial.

There is also a practice of the waiving of rulings, which I think is more a matter of convenience rather than a matter of law. I do not know that you can waive rulings or rights.

Examiners currently in business in Windsor, Hamilton, London, Toronto and Ottawa--and when I say that type of examiner, I mean those appointed, who are not connected with the court, not the ex officio examiners; I think they are probably required in smaller areas of the province--the so-called free enterprise examiners, will not be affected by the aforementioned change since they are already established in the business of providing court reporting services. They would only be faced with healthy competition.

Hon. Mr. McMurtry: This will be provided for in the rules. I think that is the appropriate way to deal with it at this time. There are a number of people who have some concern about this particular initiative. I do not happen to share their concern, but I think it would be helpful to see how it works out. I share your optimism that the provision of freelance court reporters, the provision of that service to the public on consent, will work out well. You have our assurance that is going to be in the rules.

The rules also deal with the issue of making rulings. As I understand it, the rules will not provide for a special examiner to make rulings. I agree with you that never made a great deal of sense, because in my experience everybody always did waive rulings.

Mr. Renwick: I do not understand the precise problem.

Hon. Mr. McMurtry: I think the only issue that may be between Mr. Prouse and myself at the moment is that we are going to provide for this in the rules, whereas Mr. Prouse, as he said a few moments ago, would prefer to have it provided for in the legislation.

Mr. Renwick: Yes, but what is the background of the problem? I do not understand what the problem is. You and Mr. Prouse are talking a language I do not understand.

Hon. Mr. McMurtry: It is the traditional issue under the Judicature Act that these examinations have to be conducted by a special examiner to qualify as an examination for discovery.

Mr. Prouse: Technically, I think the Judicature Act says an examination must be "in the presence of." There was no alternative, but the examiners did not conduct them that way.

Hon. Mr. McMurtry: Yes, and that has been changed as well.

Mr. Prouse: It was impossible.

Mr. Renwick: What will the change do if it goes into the rules?

Hon. Mr. McMurtry: It will allow examinations for discovery to be conducted by freelance reporters on the consent of the parties.

Mr. Renwick: Without the need for the presence of the official special examiner?

Hon. Mr. McMurtry: Yes.

Mr. Renwick: And this is causing a problem to the existing special examiners? Is that the concern?

Hon. Mr. McMurtry: I am sure it may be of some concern. I know right now some people are using freelance reporters for examinations for discovery. I may be mistaken, but I think the parties agree the transcript be considered as an examination for discovery and the counsel for the parties agree the transcript that is actually taken before a freelance reporter can be treated as an examination for discovery. That is what happens.

Mr. Renwick: Is that expensive?

Hon. Mr. McMurtry: I do not know. I cannot answer that question. I think some people just prefer the work of some of the freelance reporters and there may be greater flexibility with respect to the time of examinations and what not.

Mr. Renwick: And the places.

Hon. Mr. McMurtry: And the places for the examination, yes.

Mr. Chairman: Are there any further questions of Mr. Prouse? If not, Mr. Prouse, thank you very much for coming. It was a pleasure having you.

Mr. Prouse: Thank you.

Mr. Chairman: This concludes this session. The meeting will adjourn until tomorrow at 10 a.m.

The committee adjourned at 4:49 p.m.

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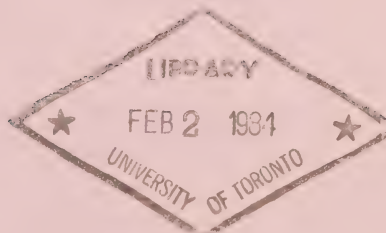
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE ACT

WEDNESDAY, JANUARY 25, 1983⁴

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Williams, J. R. (Oriole PC) for Mr. Eves

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division
Perkins, C., Counsel, Policy Development Division

Witnesses:

From the Insurance Bureau of Canada:

Batten, D., President, Mercantile and General Reinsurance Group
Kennedy, A., Vice-President and General Counsel
Morrison, D., Vice-President, Claims Commercial Union

From the Association des juristes d'expression française de
l'Ontario:

Annis, P., Director, Documentation Centre
Charbonneau, M., Director, Eastern Region
Guenette, G., Chairman, Juridical Services Committee; with Gour,
Guenette and Roy
Joyal, L. M., President
Rouleau, P., with Cassels, Brock

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, January 25, 1984

The committee met at 10:10 a.m. in committee room 1.

COURTS OF JUSTICE ACT
(continued)

Resuming consideration of Bill 100, An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: I see a quorum. The Attorney General (Mr. McMurtry) seems to be a few minutes late, but his officials are here, and I believe the parliamentary assistant is here. The first witnesses will be from the Insurance Bureau of Canada, Mr. Alex Kennedy, vice-president and general counsel; Donald Batten, president, Mercantile and General Reinsurance Group; and David Morrison, vice-president, claims, Commercial Union. Would you please introduce yourselves, gentlemen.

Mr. Kennedy: I am Alex Kennedy, general counsel of the Insurance Bureau of Canada. I have with me Mr. Batten on my left and Mr. Morrison on my right.

Mr. Chairman: Would you please proceed with your brief.

Mr. Kennedy: There are three areas of concern we have with this particular bill. Initially, we would like to direct our attention to sections 137 to 140, in particular the provisions dealing with prejudgement interest.

The concept of prejudgement interest was introduced in Ontario in 1977. The bill does not really make any changes in that other than editorial changes. We are not objecting in any way to the concept of prejudgement interest, although it is becoming a fairly expensive market for insurers. Quite apart from the fact that every time a writ is issued and prejudgement interest is involved, we are finding in practice that in virtually every settlement prejudgement interest now rears its head and is a factor.

That apart, we are not opposed to the concept. We fully accept that if an individual is kept out of money for a period of time, he is entitled to be compensated for that. Our concern simply relates to the fact that in many situations the insurer is unfairly penalized by having the prejudgement interest go back to an early point in time at which he is not really in any position to make an assessment of the value of the claim.

However, in the last few years, as you know, we have had very high interest rates. When you take that fact with the extension in the limitation period for automobile accidents from

one year to two and the fact that there is a further year in which you can serve a writ, there is a fairly lengthy delay there in any event. There have been situations in which plaintiffs' solicitors have delayed bringing the case ahead to trial, obviously with the intention of getting an additional amount by way of heavy interest.

Our concern is that it is not really until the stage at which the insurer can get access to the medical records that he is in any position whatsoever to make a real assessment of the value of the claim. Over the years since prejudgement was introduced in 1977, there has been a tendency on the part of the courts to go back to the date on which the notice of claim was made.

Clause 138 (1)(b), dealing with unliquidated claims, which in effect are claims for damages, provides that it go back to the date of notice in writing of the claim. While there is a discretion in the court in section 140, in practice the tendency has been to award judgement all the way back.

There was a line of reasoning from some judges in which they were taking the view that an insurer really could not visualize the quantum of the claim until the stage at which there was a medical prognosis. But a recent decision in the Court of Appeal in the Dugdale versus Boissneau case has really put a stop to that. In future it is going to be extremely difficult for any insurer to argue that interest should only run from that date. The Court of Appeal has not shut the door completely on it, but we are concerned about the concept.

What we would like to suggest is an amendment to section 140, to renumber section 140 as subsection 1 and to add a new subsection 2, which is set out towards the bottom of page 2 of our submission. We would suggest the addition of the words: "In exercising its discretion under subsection 1, the court shall take into account the date on which medical reports on the plaintiff were available for delivery to the defendant and the date on which, in fact, such reports were delivered to the defendant."

This would put some onus on the court in the exercise of its discretion to take this aspect into account. In asking you to give some attention to that suggested amendment, we would draw to your attention the situation that arises where an insurer pays money into court. He eventually gets interest on that money, but in practice the interest rate awarded there by the court is considerably below the prejudgement interest rate that the insurer himself has to pay on the award.

Mr. MacQuarrie: With respect to your proposed amendment, it has been my experience that medical reports, even acting for a plaintiff, are somewhat or sometimes considerably delayed. Doctors have a tendency in some of these things to hang on and hang on and, the next thing, a month to two months have gone by before you end up getting your report.

I can follow what you are looking for, and there seems to be some basis for putting the proposal forward, but I do not know whether medical reports are really the appropriate base on which

to tie a time limitation. Particularly when a person is seriously injured and you are waiting for reports from specialists and from possibly long stays in hospital, that sort of thing, before reports can even be prepared, what do you do? The plaintiff is being penalized.

Mr. Kennedy: I appreciate what you are saying and I fully accept that there are many situations, particularly in the serious bodily injury cases, where a medical report would, for good reasons, be late in coming. I think all we are trying to get at is situations where medical evidence could be made available on a voluntary basis, but the proceedings are deliberately delayed so that it is not until discovery that we get the first real chance to make an assessment and see whether we could make a settlement of it. That is the purpose behind the suggestion.

Mr. Chairman, we have another point we would like to bring to the attention of the committee in connection with prejudgement interest. This relates to the rate of interest. This is one change that has been made in the bill and it is not immaterial. It is moved from the prime bank rate to the bank rate, and that is an improvement as far as we are concerned, but what we would like to ask you to look at here is the situation where there is a claim for nonpecuniary loss. I am talking here about claims for pain and suffering, loss of amenities and loss of expectation of life.

10:20 a.m.

We had a decision of the Supreme Court of Canada in 1978 in the Andrews versus Grand and Toy Alberta Ltd. case. Andrews was a young man, I think of about 20, who became a quadriplegic as a result of the accident. The Supreme Court decided in dealing with that case that the upper limit on nonpecuniary damages was \$100,000. Effectively, they have put that upper limit in place, but since that date the courts across the country have increased that \$100,000 amount to reflect inflation in the passage of time, but that is the only basis on which the amount can be increased. We have cited in our submission a British Columbia case and an Ontario case. In the Ontario case, they just assessed damages of \$175,000; they did not actually make an award, as it says in the submission.

The fact the amount has moved up like that is the end result of inflation. I have tried to set out an example there to explain what I am getting at. In 1978 the worst possible situation where somebody was a quadriplegic was worth \$100,000 and there is interest on that. If the case came to trial in 1983 after five years, and I have taken a 10 per cent figure just to have a round figure, that would be \$10,000 a year interest for five years. So that would be \$150,000 in total. In 1983 there are additional damages of \$75,000 and interest on that, which would be \$7,500 a year for five years, for a total of \$37,500. In our view, there is overcompensation because inflation is taken into account and there is interest on both amounts.

We would like to suggest that subsection 138(3) be amended to add a new paragraph. We suggest clauses (e) and (f) be

renumbered as (f) and (g) to allow the insertion of a new clause (e), so that after, "Interest shall not be awarded under subsection 1," clause (e) would read, "on that part of the order that represents nonpecuniary loss."

I should say in honesty I became aware only last night that this approach is the approach followed in the United Kingdom. There was a decision of the House of Lords, and I became aware last night of a 1983 decision, *Wright v. British Railways Board*, in which the House of Lords reversed themselves and said they did not think no interest should be awarded. They thought there should be nominal interest of two per cent. We have suggested that it not be awarded at all, but I bring that case to your attention.

That is all we have to say on the prejudgement interest issue, Mr. Chairman, unless there are any questions. We have some other--

Mr. Chairman: I think you should carry on and we will come back for questioning at the conclusion of your presentation.

Mr. Kennedy: We have a concern with section 130. This is a completely new section which provides that where there is a claim made for damages for personal injuries or under part V of the Family Law Reform Act, the court may, with consent, provide for periodic payments to be made and also provide for a review of the award at a later date.

We have no objection at all to the provision for periodic payment. In fact, since the decision of the Supreme Court of Canada in the *Andrews v. Grand and Toy Alberta Ltd.* case, when there was a fair bit of criticism of the lump sum approach, there has been an attempt to deal with this problem. Use has been made of what is called the structured settlement approach, which in effect is an attempt to put some money by way of a lump sum into the plaintiff's hands, but also to structure payments for the rest of his life so that they come to him on a monthly basis or however he chooses.

I may have given the impression in the submission that is before you that is a common approach. I would not like to give that impression. It is certainly something that is considered in virtually every serious bodily injury case. It is not as commonly used as it is in the United States for a number of reasons, but it is available. Our feeling is that we are glad to see the periodic payment approach coming into the bill because it is being used in the case of settlements. Normally, the parties come to the court for approval, but this now gives judges the opportunity to use it, and we are all in favour of that.

What concerns us is clause (d) of section 130, which allows for the review of the award at a later date. While I think it is clear on a review of that wording that the court would have to order the review at the time of the trial and it would not be open to any plaintiff, five, 10, 15 years down the road just to come along and ask for a review, it does put the industry in a bit of a

spot because we have no way of closing files which are left with an open-ended liability. We do not know how we would place any kind of reserve on that.

As you may be aware, losses that occur during the course of a policy period have to be paid for out of the premiums that are generated from the policies issued in that same policy period. We cannot take premiums that come in the future to pay losses in the past. That would be virtually exercising a taxing power. There is a concern for the regulators, both provincial and federal, as to how they would be able to ensure there was an adequate solvency margin in a situation such as that.

The tendency we found with the structured settlements, too, is to allow for loss of income and continuing medical expenses to be paid on a periodic basis and to be indexed so the payments are not rewarded by inflation. That seems to us to give the court ample opportunity to deal with the matter there and then and not leave this possibility of a review some time down the road, which insurers really find impossible to live with.

There are inadequacies in the present tort system of which we are well aware. We are trying to strike a balance between ensuring that plaintiffs are compensated properly but do not get a windfall and protecting the public which has to pay for insurance and particularly the class of people that would buy this type of protection. Our suggestion is that clause (d) of section 130 be repealed. We think the matter could be dealt with without that being in place.

In our submission we have suggested that there was a need for a definition of "affected parties." On reflection, we do not think that is necessary. We are satisfied that reference to "affected parties" would be all right for us. Our concern is that particular provision be repealed.

The one other section we would like to speak to is section 127, which again is a new provision. As you may be aware, under policies of insurance there is a normal provision that the insured does not have any right to sue the insurer until there has been a judgement against it. This would allow the insured by rules of court to add the insurer as a third party in any proceeding.

We opposed this at the time of the Williston committee report and we still oppose it. Our feeling is that if a liability insurer declines to defend anyone on a particular case, the chances are it is because the insurer does not think there is any coverage under the policy. When that happens the question of coverage can be determined in a separate action.

We feel that if the insurer is willing to run the risk of having his own insured sue him for negligence for failure to defend and also be liable perhaps under the policy if there is coverage, then there is no reason why you should also bring the insurer in on a third-party basis.

10:30 a.m.

The reason given in the paper that was circulated earlier by the Attorney General (Mr. McMurtry) for the insertion of this clause was the possible exposure of individuals to execution. We have not found that there is any trace of this in talking to a number of senior litigation counsel.

In essence, we would ask that consideration be given to deleting this clause. Those are the areas we wanted to speak to, Mr. Chairman, and if we can answer any questions we would be happy to do so.

Mr. Renwick: I just have two comments. I would appreciate it if we could have whatever the decision was. I do not mean the actual decision, but could the advisers state succinctly what the actual decision was in Dugdale versus Boissneau? I would also ask if it would not be advisable for us to get a response from the superintendent of insurance, who I believe has given some consideration to at least one, and maybe two or three, of the points which have been raised in this memorandum.

It seems to me the superintendent of insurance would have views to express on these points which would be helpful to the committee. The points themselves seem quite clear from your memorandum and certainly do not require any questions from me, except with respect to the limitation of the discretion you have read into the case of Dugdale versus Boissneau.

Mr. Kennedy: I should say, in fairness, it is a 1983 decision. The Court of Appeal has not closed the door completely on a judge doing this.

Mr. Renwick: I would just be interested.

Mr. Kennedy: It certainly made it much more difficult than it was.

Mr. Breithaupt: Some of the points that were brought forward this morning were items we had considered to a degree during our hearings on insurance law a few years ago, particularly as we looked at automobile insurance coverages in the first and second volumes of those studies.

Was there any response by the superintendent to these concerns? I share Mr. Renwick's view, my colleague from Riverdale, that comments from the superintendent would be most helpful, as some of these themes now are prepared to be built into the formality of the structure of the courts. Certainly the points you have raised with respect to the amendment suggested on section 140 and the addition of subsection 2 are the kind of thing we must carefully consider, because when you are looking at the whole theme of prejudgement interest there has to be some certain date that can be decided upon by the court as a fair one from which that responsibility should run. I too would be most anxious to hear from the superintendent on that particular point.

The other point is the one of being able some day to close the file. That too concerns me, because to have review possible for all time, while it would probably not affect many of the

smaller agreed claims or certainly the vehicular damage claims, could be a substantial burden in those very few cases that have very large obligations resulting from the unfortunate and tragic accidents that lead to paraplegia or other very upsetting matters.

While the courts take some opportunity to consider the inflationary prospects, I am sure every judge who ever wrote a decision was surprised when 22 per cent interest was suddenly commonplace, albeit for a short period of time; but that is a circumstance which clearly could return on some occasion in the future.

Mr. Kennedy: Mr. Breithaupt has made a very valid point, Mr. Chairman. One of the things that comes back to haunt us is that in making the calculation the judges tend to average out the interest rate over the period, so even though the interest rates have dropped quite a bit from that 22 per cent, the high rates of the last few years are still making themselves felt.

Mr. MacQuarrie: On this whole question of prejudgement interest, without getting into the merits of whether it is fair or unfair, presumably your reserves for loss are invested at interest, are they not?

Mr. Kennedy: Yes.

Mr. MacQuarrie: How would the interest received on that money that you have set aside to cover possible claims compare with the interest rate specified in the statute?

Mr. Kennedy: I would perhaps ask Mr. Morrison, who is a claims expert--

Mr. MacQuarrie: I was wondering whether we were talking about a substantial sum of money or whether we were just--

Mr. Morrison: Certainly, Mr. MacQuarrie, it would not reflect in any manner the rates that we have seen, perhaps since 1979 through to the depression of the rates at this time. I take Mr. Kennedy's point with the cases of that era, of the prejudgement interest high-rate era, which may or may not return, to the extent that investments must be protected, whether for federal or provincial insurance, and the type of investment one might make on technical reserves. I am not a financial man, and I could not answer you as to the running yield one would see.

I think I have answered that matter. However, I would like to add the point that we have made every endeavour, whether by payment into court or by an advance payment where we can perhaps not totally establish the medical situation, to attempt to find in all equity the appropriate amount to advance, and I feel that in no judgement of interest have we ourselves lost the money, if you want to use that term, from technical reserves; but certainly we have attempted to assist the plaintiff whether represented or not. To that extent I think there is a balance.

Mr. MacQuarrie: I was just rather interested in whether we were talking about--

Mr. Chairman: Mr. Attorney General, do you have any comments?

Hon. Mr. McMurtry: Yes, thank you, Mr. Chairman.

Mr. Batten: Mr. Chairman, it would be with some timidity that I would ask whether I might say a word before your colleague has perhaps the last word.

Mr. Chairman: Certainly.

Mr. Batten: In looking at clause 130(d), this matter of moving from a situation where a judgement is final and definite to a situation where a judgement is final for the time being, I would ask the committee to look at it with some care. It seems to me it has been fundamental to our legal system over the many years it has been developing that a judgement is final and definite, subject of course to appeal.

It is very hard for me and my associates here to assess or even indicate to you what such a structural change could do with regard to the mechanism for the social redress of injuries and so on, due to the negligence of another, what the effects would be; but it does involve, as has been mentioned, the practical aspect of when you can close a file, the reserving of claims and so on.

10:40 a.m.

It would seem appropriate for the superintendent of insurance to have some input at this point, and that certainly is a welcome suggestion, but it may be that the committee should consider very carefully whether in the light of what is currently happening--and perhaps a reinsurer, because generally speaking a reinsurer deals only with the biggest of claims if we are talking of injury claims.

We would draw your attention to the fact that we see these claims that go to court, or even where they do not, and they are open from five to seven years typically after the date of the accident. Therefore, one is looking at a situation where a judge is assessing the award, assisted obviously by the plaintiff who is represented with counsel and has access to the best of actuarial and financial advice. I think one should understand there is this time lag and it is not an instant situation of, "There is the accident. Now we have to make an assessment," or the judge has to make an assessment.

There is a very real passage of time during which, in most cases or a very high percentage of cases, it is possible medically today to predict the shape of things to come with regard to recovery and where over the long term, and many of these cases are long-term, actuaries and financial experts are able to come up with very reasonable, fair, equitable and just decisions as to the value that should be ascribed to the claim in the judgement.

Therefore, you must forgive me, but I find it hard to appreciate your concerns. As to the number of people who are

affected, I do not believe it can be very many when you look at structured settlements, advance payments and periodical payments. These techniques have been introduced by the industry and I think with your collective blessing because they have worked to improve greatly the position of the plaintiff.

All I am saying is that when you make this change, I believe you should think even more carefully than perhaps you have, because I think it is a much bigger change than appears in this general context. It affects things which I as a person with an insurance background simply do not understand with regard to the whole gamut of the legal system, does it not?

Mr. MacQuarrie: In reading section 130 and the application of clauses (c) and (d), it would appear that this only is applicable with the consent of all the affected parties, presumably the insurer and the parties affected now with that sort of caveat on the whole thing. Does it then assume the same sort of significance that you fear?

I find it difficult to envision a situation where an order is reviewed, but at the same time it might well be possible that because of the circumstances or the types of injury in a case when a judge initially handed down the decision, they are just unable to attach the actual quantum with any degree of accuracy. They might say, "This is fine for now, but we might have to look at it again." The insurance company or the party through which they are acting can agree or not as the case may be. I just do not know whether that clause, with the consent of all affected parties, eliminates or should eliminate your fear.

Mr. Kennedy: It does build in a good deal of protection. There is no question. Technically there is a question as to whether the insurer is a party to the action. In many cases it might not be. Basically we think there is a protection there. That is one of the reasons we felt there was no need to ask for further definition of the case. With that provision there, we are afraid it will tend to be the normal procedure for awards to be made subject to review rather than on an exceptional basis. That is what we are concerned about.

Mr. MacQuarrie: I find it rather hard to visualize a solicitor for a defendant, except in very unusual circumstances, saying, "I will consent to having this order reviewed" some months or years down the line. I just do not see it happening.

Mr. Kennedy: Even in an unusual situation you raise the question of how an insurer (inaudible) in terms of the reserve--

Mr. MacQuarrie: I realize there is this problem.

Mr. Kennedy: --and how can the superintendent, as the regulator, be satisfied--

Mr. MacQuarrie: We will have to have sort of elastic reserves.

Mr. Chairman: Have you concluded, Mr. MacQuarrie?

Mr. MacQuarrie: I have no questions.

Hon. Mr. McMurtry: Mr. Chairman, we welcome the brief from the Insurance Bureau of Canada. I apologize to the distinguished guests that I was not here at the opening of their brief. I was just ending up a cabinet committee meeting.

As you know, I only saw your brief for the first time yesterday and obviously am unable to make a comprehensive response. There have been some suggestions in relation to consultation with people such as the superintendent of insurance. We certainly have no objection to that concept and we will not be dealing with clause-by-clause this week or this month, so there will be sufficient time for that.

Just very briefly I would like to make some preliminary observations. First, in relation to the prejudgement interest, we are quite prepared to look into amendments to our sections 138 to 140 because we are concerned as well that perhaps the discretion may have been overly narrowed by the Court of Appeal decision. As I say, we would like to clarify that situation, perhaps without throwing it sort of too wide open. That will certainly be reviewed very carefully and we are very sympathetic to the proposal that has been made.

The nonpecuniary damage award is something we will reflect on. As you gentlemen are probably aware, the Advocates' Society will be appearing before us tomorrow. You will probably all want to ask some questions of them. Many of the leaders of the Advocates' Society of course are very closely identified with the insurance industry and this is something we will certainly consider very carefully as well, but we will be seeking their views specifically on this point. As you know, this legislation has been through a very intensive process of consultation, particularly with the profession and with the judiciary.

Regarding the matter of the periodic damages, the issue of section 130, Mr. MacQuarrie and others have pointed out that this is only subject to a consent. This particular section is in there, as you probably know, as a result of the recommendation of the tort compensation committee, as I recall the name. It was chaired by Mr. Justice Holland of the Supreme Court of this province. As you are well aware, Mr. Holland was a very distinguished insurance company counsel for many years before his appointment to the Supreme Court bench. I would like to think he would have been well aware of the concerns of the insurance industry in respect to this. This is why the requisite of consent at the same time was part of that section.

10:50 a.m.

I agree with you that the insurance company is not a party to the proceedings within the meaning of that term as it is employed in the act, but is this not a matter that could be resolved in your own contracts of insurance with your own insured? I gather the concern of the industry is that the insured--I am

just trying to envisage the situation. I think Mr. MacQuarrie was having a little difficulty with this, too. I am having some of the same difficulty.

In these cases of any consequence where there is an insurance policy, the counsel is appointed by the insurer pursuant to the contract of insurance and, having been down this road as a counsel in private practice, it would occur to me that it is hard to envisage a situation where a counsel for the defendant in those circumstances would consent in circumstances where the insurer, really his employer, was not in agreement.

I am having a little difficulty in understanding why the requisite of consent does not meet your concerns. In fact, I am asking a question of the delegation.

Mr. Kennedy: We heard the concern about technically perhaps not being a party and, strictly speaking, while I agree with you that the counsel for the defendant is there on behalf of the insurer, if the interests at any point conflict, his principal interest has to be to the insured. That is who he is put there to defend. There may be a conflict.

Hon. Mr. McMurtry: As I say, we will not make our final position known, but I do not ever recall hearing of a case of any significance where a lawyer was placed in those circumstances. If that situation arose, and I am thinking from my own experience, where the insured and the insurer had a disagreement, and I was retained by the insurer to represent the insured, probably what would have to happen would be that the insurer would have to get another lawyer. That would probably be the course of action.

Just how that would have affected his rights under the insurance policy I suppose may vary depending on the policy. I am suggesting that, as a practical consideration, it seems to me to be highly remote that a consent would ever be forthcoming on behalf of the insured party without the consent of the insurer. It is very difficult for me to envisage that.

In any event, it is something that could be addressed to some extent in policies of insurance. If you are faced with this particular provision, perhaps there could be an amendment to a policy of insurance to stress this feature as part of the insuring agreement between the insured and the insurer.

In any event, we have your concerns. I thought I would just make a preliminary response.

Mr. Kennedy: The minister has made some valid points here which we can take into our own thinking as well. We are not quite in the position to put in any wording with all policies. All the automobile policies, as you are aware, are subject to the approval of the superintendent, so the wording is not ours. But subject to that--

Hon. Mr. McMurtry: Yes, I think the superintendent would be sympathetic to that situation, given the special position.

The last matter gives me a little more difficulty in relation to the adding of the insurer as the third party. Certainly, as you have readily conceded, this was a provision that was recommended by the Williston committee. It was reaffirmed by the committee chaired by Mr. Justice Morden. It seems to have the support of the judiciary and the practising profession in the province.

Again, that does not necessarily end the matter. I think the members of the committee and the government are going to be motivated, as we must be in all these issues, by the broad public interest, and the public interest may not always be served by unanimity among the profession and the judiciary. Those of us who are members of the profession like to think so, but there may be members of the public who have difficulty accepting that conclusion.

It seems to me the public interest is well served by having these issues resolved in one lawsuit, a person who has a policy of insurance and the insurer denying coverage. It seems to me to be, as was pointed out by the Williston committee, a matter of public interest to allow these issues to be determined in one lawsuit at one time and to avoid a multiplicity of proceedings.

You suggest the possibility of a writ of execution being filed in the interim between the first and the second actions involving the insured and his insurer or the person who believes he is insured. It does not happen very often. I really have no answer to that. I know the industry is very much committed to serving the public interest. I am having a little difficulty understanding why the Insurance Bureau of Canada does not think it would be better to deal with these issues in one action.

Mr. Kennedy: Mr. Chairman, this situation does not arise very often. It is exceptional for an insurer and an insured to be in dispute over coverage under a policy. It seems unfair to us that, if the insurer itself is prepared in these circumstances to risk being held liable under the policy and to risk the costs of an action being brought against it for failure to defend, it is met with two sets of costs. If it is willing to take that risk, why should it automatically be added as a third party in a situation like that?

Hon. Mr. McMurtry: I have to tell you, as one who has always been a great supporter of the insurance industry, that if it has to come to a choice of having the insurance company put up the two sets of costs and the individual defendant, I am more concerned about the individual who obviously, in most cases, does not have the resources. If you have to make a choice, unhappy as that may be, we are not dealing with absolutes; we are dealing with what is the more compelling right. In my view, the more compelling right is that of the insured to have these issues determined in one lawsuit.

Mr. Kennedy: We can appreciate that. We know we have been fighting an uphill battle on this one, but we wanted to raise it again.

Hon. Mr. McMurtry: I appreciate that. Certainly some of these issues you raise will be given very careful consideration, speaking on my own behalf and for the ministry. Thank you very much for your attendance.

Mr. Kennedy: Thank you for hearing us.

Mr. Chairman: Thank you, gentlemen, for being here with us this morning. We appreciate having you.

L'ASSOCIATION DES JURISTES D'EXPRESSION FRANCAISE DE L'ONTARIO

Mr. Chairman: The second witnesses will be l'Association des juristes d'expression française de l'Ontario: L. Marcel Joyal, QC, president; Gilles Guénette, chairman, juridical services committee; Michel Charbonneau, director, eastern region; Jacques Gauthier, director, Toronto region; Paul Rouleau; and Peter Annis, director, documentation and translation centre.

Gentlemen, would you please come to the table and since I am not fluently bilingual, I will turn over the French portion to my colleague the Attorney General and he will greet you in French.

11 a.m.

Hon. Mr. McMurtry: My colleagues in the association know that I am not by any stretch of the imagination bilingual, but thank you, Mr. Chairman.

Personnellement, je suis heureux de souhaiter la bienvenue aujourd'hui à mes collègues de l'Association des juristes d'expression française de l'Ontario. Un des plus grands privilèges que j'ai eu en tant que procureur général a été d'avoir la possibilité de collaborer avec des juristes si dévoués et engagés. Nous avons travaillé ensemble sans partisanerie pour tenter de consacrer les sessions aux problèmes complexes qui entourent l'implantation d'un système juridique bilingue en Ontario. Ce qui a marqué cette collaboration, c'est, je crois, un esprit de confiance réciproque qui nous a permis de traiter de choses concrètes et devant se résumer en une totale réalisation des attentes des francophones. Bien sûr, cela ne signifie pas que l'Association soit toujours d'accord avec tout ce que nous faisons et nous ne pouvons pas être d'accord avec tout ce qu'elle propose. Le texte des articles 135 et 136 est un reflet de cette collaboration. Dans l'ensemble, ces articles contiennent presque tous les éléments proposés par l'Association et nous devons leur être reconnaissants pour leur contribution.

Thank you very much.

Mr. Chairman: Thank you, minister. Gentlemen, it is exhibit 19.

Mr. Joyal, would you introduce your colleagues to the committee?

Mr. Joyal: Thank you, Mr. Chairman. On the extreme right

is Mr. Paul Rouleau, of Cassels, Brock, Toronto; Gilles Guénette, of Gour, Guénette and Roy--who is one of your colleagues.

On my extreme right is Peter Annis. He is director of the centre of documentation and translation to which reference is made in the brief. To my immediate left is Michel Charbonneau, counsel from Hawkesbury. This is your delegation, sir.

Mr. Chairman: Thank you. Welcome. You may proceed at your convenience.

M. Joyal: Pour des raisons qui sont autres que symboliques, je me permets de vous adresser, M. le Président et Membres du comité, dans cette autre langue qui devient prochainement une des langues officielles de nos cours de justice dans l'Ontario. Mais pour faciliter la tâche à ceux qui sont encore unilingues, vous avez devant vous un texte qui est intégralement cité dans les deux langues. Cependant, vous me permettrez d'aborder les quelques commentaires que je désire faire dans cette autre langue officielle qui est le français.

Et c'est avec plaisir que l'AJEFO se rend à votre invitation et participe à ces débats sur la Loi 100. Nous apprécions beaucoup l'occasion qui nous est offerte de rencontrer les membres du comité et d'analyser quelques-unes des dispositions de cette Loi.

La création de l'AJEFO est relativement récente. En fait, l'Association n'existe que depuis trois ans. Elle regroupe près de trois cent soixante dix membres en règle dont la plupart sont des avocats bilingues inscrits au Barreau de l'Ontario. Ses effectifs sont répartis aux quatre coins de la province, bien que, naturellement, ils soient plus nombreux dans les régions de Toronto et d'Ottawa. Et, élément assez remarquable, plus de trente pour cent des membres de l'AJEFO ont une langue maternelle autre que le français.

On a souvent prétendu que l'AJEFO n'était que l'aboutissement logique d'une longue évolution. Il est vrai qu'elle a été créée suite aux initiatives répétées du gouvernement provincial visant à offrir aux citoyens de l'Ontario des services publics dans la langue de leur choix. Les changements effectués représentaient un défi de taille et se sont traduits par la création de nombreux programmes, dans des secteurs où les contacts entre l'Etat et le citoyen sont particulièrement fréquents, notamment dans le domaine des services sociaux et des services aux consommateurs.

Let us practice our English now.

Of special significance are changes initiated with respect to the administration of justice. It is our view that through this particular institution the rule of law meets its ultimate test and where social and cultural divergences and conflicts are resolved.

The members of the committee are well aware that the changes were initially made in respect of criminal trials. It was felt that as the liberty of a subject was paramount, that is where it

should start. A defendant should have the right to be tried in the language of his choice.

A pilot project for French trials was started. I believe it was in Sudbury. It worked. The system was later extended to other areas of the province and today, in a remarkably short time, bilingual criminal trials are available to everyone in the province. It is the collective view of my colleagues that this has indeed put Ontario on the very leading edge of many requirements of our multicultural society.

But the provincial government's commitment did not stop there. It set up the necessary infrastructure to provide for the probate of French wills, the issuance of bilingual letters patent, as well as other public documents of common use.

In 1978, the Attorney General propounded a scheme to make French the ultimate language before the civil courts of Ontario in certain designated areas. This initiative, in purely functional terms, created a challenge to both bench and bar and the whole machinery running the court system of Ontario. If the bar were to serve the citizen in the French language, there was now required not only proficiency in the language but proficiency in the language of the law as well.

The language of the common law is English. Its roots are English. Its history, its traditions, its doctrine reflect English historical and social development. The common law has not known any French equivalents since the days of law French, a period so far back in history that the French terms of the time are no longer found in French dictionaries.

The practitioner in Ontario, otherwise fully bilingual, had to start from scratch if he were to deliver his services in the two alternative languages. We must keep in mind that he had gone through law school in English. He had done his articles substantially in English. He had done his bar admission course in English. Also throughout, he had to rely on authorities, precedents, case books, whatever, that were exclusively in the English language. Until recently, there was in fact no French bibliography with respect to common law subjects. Therefore, the practitioner needed to develop competence in the language of the law, a law that was so deeply rooted in the English idiom.

So l'AJEFO was born. It decided initially on two priorities. The first was to establish a library of French texts and precedents of the kind most often used in noncontentious business. Over the past couple of years, l'AJEFO has compiled three volumes of Le Guide du Praticien, which is now distributed throughout the province. It is really a solicitor's handbook.

11:10 a.m.

The process of printing French text and materials of that nature is an ongoing process. It is expected that by 1985 there will be a veritable shelf, sort of a French O'Brien, of French-speaking texts involving precedents, wills, contracts, real estate agreements--all of that whole panoply of precedents that are a great and important guide to the practising lawyer.

I should mention that to facilitate this task of translation, l'AJEFO, together with the University of Ottawa, and aided by public funds from both federal and provincial authorities, established a documentation centre, of which the current director is Peter Annis, on my extreme left, a former counsel with the Department of Justice in Ottawa. This centre is currently collaborating with the Attorney General's office in the program of statute translations and assisting in the process of formalization of legal terminology.

Our second priority was to suggest various processes relating to French and bilingual trials. We submitted representations to the rules committee in that respect.

I think it is fair to say that the basic approach of l'AJEFO in submitting these recommendations was to make sure both law and language were kept in balance so that both the needs of the citizens and the ends of justice might be served.

We entered into other programs as well. We organized continuing education programs in French, in such diverse fields as criminal law, matrimonial law and the Charter of Rights and Freedoms. As a sort of bilingual arm of the Law Society of Upper Canada, we are participating in French pilot projects at the bar admission level. We are currently working with the law society in preparing continuing education courses in French for the bilingual bar when the new rules of civil procedure are promulgated. As you know, there will be a tremendous amount of catch-up work to do whenever these rules come into effect.

We also felt there was a need to develop a greater public awareness of these legal services now being offered to the citizens of Ontario. One program initiated by l'AJEFO consists of a series of half-hour broadcasts on French TVO, highlighting in a competent yet entertaining manner the legal impact on citizens of such phenomena as divorce, impaired driving, buying a house and other incidents of our social and economic life where the law is pervasive. Those who have had a chance to watch TVO will be familiar with the program; it started a couple of weeks ago at 6:30 on Sunday nights. In our view it is a very good program of awareness to the public and it is done in a most entertaining form. Again, the participation of the members of l'AJEFO in creating what we call the meat of these programs from a legal obligations and rights point of view was a very comforting contribution indeed.

We have also gone into radio. We are starting, very shortly, with what we call "minute juridique." These are one-minute spots that alert the citizen to his rights and obligations in any field. We hope these will be broadcast on a continuing basis on all the French-speaking stations in Ontario in the very near future.

Remembering that we do not all have the same facility of being able to argue in both languages with equal competency, we are responding to a great demand from what we might call members of the English-speaking bar who already have some particular competence in the alternative language. To meet the need of competence, or perfection if you wish, this spring we will be

sponsoring a series of courses in the language of the law geared to the needs of the working bar. As I said, there is a great demand for this kind of program. We are starting in Cornwall late in February and we hope to start simultaneously in both Toronto and Ottawa about the first week of May.

Incidentally, this language course is modelled on the one that has been given to judges. It is just an immersion course that takes one day. The ordinary practitioner who knows his high school or college French will be able to converse in the language of the law when that language happens to be French.

We think also what is an interesting phenomenon with respect to that, is unknown to us, there is this tremendous response throughout the province, and I would say throughout the working bar, to the initiatives that have already been taken by your government and especially by the Attorney General's ministry. We had felt there might have been some degree of great resistance to bringing this foreign matter into a long and well-established court system, but the response is quite to the contrary; it is very positive. It has been very encouraging for those who have been advocating these new programs to find such a positive response among English- and French-speaking lawyers, as well.

As you can see, this opening has been sort of a self-serving elaboration of what we have been trying to do, but I think it was merely to point out to you that what has been done has been done with a great deal of enthusiasm. I think we have been lucky. We have enjoyed excellent leadership for the first three years under Robert Paris, whom some of you may know. We have had the generous financial assistance of the Attorney General's office. We have profited from the professional knowledge of our own members as well as the bilingual bar generally across the province. We have found willing and attentive participation and corroboration from the law society, from the local law association in Ottawa and elsewhere.

Indeed, I think it is fair to say we have found willing witnesses, if you wish, among members of the Legislative Assembly, the senior staff of government and the senior staff of Mr. McMurtry's ministry. All the programs I have recited to you in perhaps too great detail have always been done with a spirit of obligation and fraternal goodwill from all of the authorities and institutions with which we have been dealing. That concludes what we would call the preface.

J'aimerais maintenant inviter M. Michel Charbonneau à traiter de certains aspects techniques du projet de Loi 100 et que vous trouverez au début de la page 6 du mémoire placé devant vous.

M. Charbonneau: Nous sommes heureux de constater que le projet de loi est présenté dans les deux langues officielles du Canada, et de savoir que les Règles de procédure civile qui doivent être adoptées de concert avec cette loi le seront également. Nous profitons de cette occasion pour en féliciter le gouvernement de l'Ontario.

Ce que nous aurions souhaité, et ce que nous souhaitons

toujours, idéalement, c'est que l'Ontario adopte l'équivalent de l'article 133 de l'Acte de l'Amérique du Nord Britannique (maintenant la Loi constitutionnelle de 1867). Le Procureur général, dans ses commentaires, mentionnait que le gouvernement ne pouvait acquiescer à toutes nos demandes, et c'est sans doute le cas pour celle-ci.

A défaut de cela, nous sommes quand même en mesure de constater une progression importante de la politique d'étatisme que le gouvernement de l'Ontario a manifestement adoptée.

Pursuant to the Judicature Act of 1978, it was possible to have a bilingual civil trial in those designated regions, but only by means of a motion to the court. All of you certainly realize what that entails, the cost and the time. This process was expensive and moreover frustrated the use of French before the courts. In a similar fashion, the right of francophones to testify in French during discovery or during other interlocutory steps of an action was not automatically available. An order had to be obtained and justified.

11:20 a.m.

The discussion draft Courts of Justice Act, March 31, 1983, proposed the replacement of the motion procedure by the simple use of a requisition. The association prefers this latter procedure. Consequently, we are concerned by the fact that Bill 100 does not address the question of the mechanics envisaged for accessing the right to use French, both at trial or in other steps of a proceeding; that is, the bill mentions neither the need for a motion nor the simpler process of requisition. It is presumed that the details of the implementation of language rights in the courts are reserved for later consideration in the regulations.

We are concerned that the improvement to remove the need for a court motion could be reintroduced by the regulations. The association would appreciate being consulted when the time comes for drafting the regulations. It would be preferable if this act would immediately state that it is by requisition. That would certainly end our concern. If it is to be in the regulation in a similar fashion, that would certainly also be satisfactory. In any event, we would like to be consulted.

The two other matters will be addressed by my confrère, Mr. Guénette.

Hon. Mr. McMurtry: As you know, by regulation we certainly have made a commitment that it is not going to require a motion. Because the regulations are going to have to deal with time periods, we think it is perhaps unwise to split the procedure between the statute and the regulations. That is why we think it will be better to do it by regulations.

As you know, we certainly will be consulting. There is a meeting of the advisory committee on February 3, which will be well represented by your association, and there will be full consultation. I am confident we can resolve that issue.

Mr. Joyal: Mr. Gilles Guénette, who has previously been introduced to you, will speak to you on the other aspects.

M. Guénette: M. le Président, il m'incombe de vous entretenir d'une disposition toute nouvelle, que nous considérons comme un recul. Il s'agit du paragraphe 3 de l'article 136 qui exige le consentement unanime des parties pour que l'on puisse obtenir un jury bilingue.

Notre premier reproche a trait au conflit découlant de l'application simultanée des dispositions de l'article 136. Si mon client est francophone, le paragraphe 136(2) me permet d'exiger une juge bilingue. Il s'en suit également qu'en vertu de l'alinéa 136(4)(a), je peux plaider en français. Cependant, s'il y a un jury, que ce soit à la demande de mon client ou d'une autre partie, et qu'une partie a refusé son consentement à un jury bilingue, selon toute vraisemblance, le jury sera unilingue anglais. Le jury pourrait comporter un ou plusieurs jurés bilingues, mais ce serait par hasard. En vertu du droit conféré par l'alinéa 136(4)(a), je pourrais donc plaider, ou mon client témoigner, en français devant un jury dont les membres ou certains d'entre eux, ne me comprendraient pas.

Le deuxième reproche, connexe au premier, est d'ordre plus fondamental. Ces dispositions qui visent à accorder des droits linguistiques à la minorité repose sur le principe suivant lequel il est préférable que le juge entende et comprenne le témoin dans la langue du témoin, et essentiel si le témoin est partie au litige. La Loi devrait, dans ce cas, traiter les anglophones et les francophones de la même façon, afin qu'ils puissent s'adresser au tribunal directement sans l'intervention d'un interprète. Cependant, par le biais du paragraphe 136(3), si je demande un juge bilingue, en vertu du paragraphe 136(2), une autre partie peut à chaque fois faire échec à cet objectif en demandant un jury et en refusant son consentement à un jury bilingue.

La solution la plus simple, et, celle que nous préférierions, serait simplement de rétablir le jury bilingue sans l'exigence du consentement unanime. C'était la solution apportée par la Loi d'amendement de la Loi sur l'organisation judiciaire de 1978. A défaut de rétablir purement et simplement le jury bilingue, une partie francophone devrait pouvoir, dans la situation envisagée plus haut, unilatéralement et par simple réquisition, radier l'avis de jury. C'est la solution que nous recommandons. Nous sommes également d'avis que la Loi ne devrait pas exiger le consentement au jury bilingue d'une autre partie qui parle le français.

L'A.J.E.F.O. est d'avis que, quelle que soit la solution retenue, exclure le recours au jury est la moins heureuse. Nous croyons qu'il est préférable de ne pas restreindre le droit d'être entendu par un jury. Il ne fait aucun doute qu'un jury bilingue peut rendre justice à l'endroit de tous les citoyens de la province.

Nous sommes heureux d'avoir eu très récemment la confirmation du Procureur général qui a décidé de conserver la disposition prévue à la Loi de 1978, relative à cette question.

Quant aux actes de procédure en français, nous désirons attirer votre attention sur l'alinéa 136(4)(e) et vous demander de considérer que si vous enleviez les mots "si toutes les parties y consentent...", l'administration de la justice dans les régions désignées se rapprocherait beaucoup de l'article 133 de l'Acte de l'Amérique du Nord Britannique. Etant donné qu'il s'agit des régions désignées, le fardeau accru imposé aux services judiciaires ne serait pas énorme. Déjà, le projet de loi, à l'alinéa 136(4)(g) prévoyait des services de traduction là où on en a besoin. Plusieurs avocats anglophones manifestent le désir et ont la compétence d'exercer dans les deux langues. Le cours de perfectionnement du français juridique de l'A.J.E.F.O. a suscité chez eux beaucoup d'intérêt. Trente pour cent des membres de l'A.J.E.F.O. ont l'anglais comme langue première.

Sur le plan national, nous verrions dans ce geste une ouverture symbolique importante à l'endroit des autres régions du Canada qui comptent des populations francophones (le Manitoba, le Nouveau-Brunswick et le Québec) et qui permettent de déposer la procédure écrite en français sans restriction.

Nous reconnaissons que nous n'avons pas appuyé sur cette question et nous n'en faisons pas un reproche au projet de loi. Nous offrons ce commentaire sur les actes de procédure en français comme matière à réflexion. Nous espérons pouvoir convaincre le ministère de tenter un projet d'essai, un projet pilote dans Prescott-Russell. Nous souhaitons également que le gouvernement de l'Ontario continue à appuyer financièrement les efforts en vue du bilinguisme dans les cours, particulièrement au niveau de la formation des interprètes.

Mr. Chairman, I would like to raise another problem which has not been discussed previously by our association and which has not been raised with the Ministry of the Attorney General, but which appears to be relevant in view of the previous intervenance. It is the problem that is raised by subrogation in insurance contracts, which we expect will be relevant in the future to the issue of bilingualism in the courts.

11:30 a.m.

We have seen a number of occasions where insurers of a francophone insured will invariably select a unilingual anglophone lawyer to represent the insured in an action and invariably the francophone party will not be apprised of his rights under the Judicature Act, and shortly under the Courts of Justice Act. Even in situations where the other parties to the action are bilingual or French speaking there will be a problem, because the insurer will give instructions or its counsel will unilaterally select not to proceed with a bilingual trial.

We have no particular solution for this problem as of now and we merely wish to mention that we expect it to be a problem in certain instances in the future.

I would like now to address the question of merger of courts and how it relates to bilingual services. Besides those provision

that pertain strictly to the use of French before the courts, L'AJEFO is also concerned that no opportunity be lost which may tend to improve and simplify the administration of justice in the province. It is with this thought in mind that the association wishes to see the district and high courts unified. It is our contention that unification would result in elimination of the duplication of court services, besides ending jurisdictional disputes.

What is more important, L'AJEFO believes the greater availability of bilingual judges at the district court level and the unifying of the bilingual staff of these two courts would facilitate the delivery of bilingual legal services foreseen by the bill. However, we hasten to add that if a speedy solution is not in sight on the question, the association prefers to proceed with the immediate adoption of Bill 100.

Mr. Joyal: We are at your tender mercies, Mr. Chairman.

Mr. Chairman: Thank you. Are there any questions by the committee to the witnesses?

Hon. Mr. McMurtry: In relation to the bilingual jury, I have dealt with the mechanics for obtaining a bilingual proceeding. I think that will be resolved and I give you our assurance the bilingual jury will be dealt with in the regulations. You have my letter just written the other day.

This is an issue, quite frankly, where there was obviously a breakdown in communication, for which I have to take full responsibility. My letter to you reflects what I thought was in the act, so obviously there is an area in which I had not done my own homework. However, it certainly had been my own belief that would be a matter of right and not a question of consent. We will be introducing amendments to the legislation to clarify that, pursuant to the letter you received the other day.

I do not think there is anything more to deal with so far as the right to a bilingual jury is concerned as well.

On the matter of the pleadings, again I think we are talking about an evolutionary process. We have discussed over the years, in the approach we have taken in providing a bilingual court structure, that one of our concerns, and I think it is a concern that has been addressed effectively, was not to create the impression, wrong as it may be, that bilingual pleadings, for example, were going to add another expense to civil litigation. As you have heard me say on other occasions, we did not want the anglophone unilingual bar to believe that litigation was automatically going to become more costly by reason of having to have translation services of one kind or another available in order to deal with bilingual pleadings.

As you have pointed out, we have provided the bilingual services in other respects, through the government, in order to meet the concern that litigants would be met with this additional expense. We started off with small claims court where that is now a right.

As for the other civil courts, the alternatives are quite obvious. Either the litigants provide their own translation resources through their lawyers or the government provides the translation services for anybody who wants to have some assistance in drawing up French language proceedings, pleadings in offices which do not have that resource.

As you can imagine, I favour the latter course. This is something I would like to see borne by the government in order to avoid the reality and perception of an additional cost faced by individual litigants just because one of the parties wishes to proceed in the French language. All of us have been concerned about dealing with this and certainly our French language advisory committee, which has a very substantial representation from the Franco-Ontarian community, recommended as well that we go slowly on that issue.

We have reached the stage where we can make haste a little more quickly, but I want to make sure we have the resources and the administrative apparatus to make those resources available when we get into the business of bilingual pleadings. If the impression or rumour gets around that law offices are going to have to have these resources available at their own expense for the drawing up of these pleadings, we could be faced with a controversy that is not going to be helpful to anybody.

We see this as something that has to be dealt with very soon. I do not think we will be able to deal with it within the few weeks before we go to clause-by-clause debate, but I just want to assure you that it will be a high priority and something that will be discussed, hopefully, during the meeting of February 3 with our French language advisory committee. I certainly see that as perhaps the next step in our ongoing program.

We expect to hear more about the unification of the courts from the next delegation. If I was of a suspicious nature, I might think from the geographical representation--

Mr. Joyal: Mere coincidence.

Hon. Mr. McMurtry: --the fact of the distinguished association of the Ottawa-Carleton bar, our close colleagues, that obviously there has been some very important, useful, productive, professional co-operation.

11:40 a.m.

I expect the debate in relation to the unification or merger of the courts is going to be a debate that is going to continue beyond these proceedings and it is a debate which will have to continue. In the meantime, it is very important if the association can keep us informed of any problems in relation to delays with respect to trials in the Supreme Court in particular.

You quite properly point out that there are more bilingual judicial resources in the county and district courts and that delays have been caused by the purported lack of resources in the

High Court. I say "purported" because the resources are there. I am troubled sometimes by reason of the fact they are not always available. The Chief Justice of the High Court is very supportive of this program. He has a few bilingual judges. There may be other good reasons for unification, but I would like to think that should not be necessary to resolve the issue of having these bilingual judicial resources available for these trials.

This is another area in which the association can be particularly helpful to us in monitoring the situation and advising us as to when there are delays in particular parts of the province because one of your members is told he cannot get on with the trial because there is not going to be a Supreme Court judge available for so many months. That is an issue that really does trouble me. Any information you can give us in this regard will help us to try to ameliorate the situation. I would be unhappy if this right that was asserted was to lead to unfair delay in getting these matters litigated. We will monitor this closely with your help.

Those are the responses I wish to make at this time. I think we really are pretty much ad idem on most of these issues.

Mr. Joyal: As to the problem you raised about the High Court and the delays in trials, somebody jokingly was suggesting that it is not only a shortage of bilingual High Court judges, but those who are bilingual are tired of always having to sit in Hawkesbury and have Mr. Charbonneau plead before them.

We are very conscious of the other comments you have made with respect to the question of the inherent right to French pleading. The policy we would wish to advance in that respect means that as we are making progress, naturally, our level of further achievement always gets higher and higher. But we are conscious of the practical problem you have raised. We are only putting it on the table for your consideration so you do not forget. That would be our position.

Mr. Renwick: May I ask the Attorney General if he would be good enough to let the members of the committee, or at least each of the caucuses, have a copy of your letter he referred to on the question of the bilingual jury.

Hon. Mr. McMurtry: Yes, we will certainly do that.

Mr. Renwick: My second request is, what is your thinking about the process by which the exercise of the right to bilingual proceeding will be exercised? I heard you give the assurance you would not be reintroducing the concept of a motion. How do you think you will deal with it?

Hon. Mr. McMurtry: I will be moving an amendment when we get to clause-by-clause discussion which states simply that a party who speaks the French language has the right to require that the hearing be conducted before a bilingual judge, or the right to be heard by a judge and jury who speak both the English and French languages. That will be right in the statute, and it will just be

a question of filing a notice in the court. The time frame and what not will be worked out by regulation, but it will simply be a question of filing a notice. There will not be any requirement for a motion.

Mr. Chairman: Thank you, Mr. Renwick, Attorney General and Mr. Joyal for being with us here this morning.

Mr. Joyal: May I thank you, sir, and the members of your committee. It is our first penetration into the legislative arm of government. We thought we would try to put our best foot forward, so to speak, to indicate the progress which is being made and what we like to think of as being policy moves by the Attorney General especially. We keep thanking the Attorney General, for some reason, probably for reasons which are pretty clear to most of you.

What we are trying to suggest is that we have an impression many of these moves, these policy initiatives which are being taken, seem to have the general support of all parties in the Legislature. That, of course, makes our work far more enjoyable. For that alone we wish to thank you, sir, and the members of your committee.

Hon. Mr. McMurtry: Thank you very much. I would reiterate what you have said, M. le Président. These initiatives have had the support of all parties in the House. Your perception is quite accurate in that regard. Thank you very much for your attendance.

Mr. Chairman: Before the committee members disperse, I would like to mention that we have tentatively arranged for the committee to sit on Tuesday evening, January 31, which is next Tuesday. I would like the members to mark it down. We will be able to accommodate all the delegations that want to appear, the architects and engineers, in the three days if we sit on Tuesday and if we do not get any more from now on. Everything will be fine as long as we can stick to our schedule next week. We will be in great shape.

The committee recessed at 11:47 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE ACT

THURSDAY, JANUARY 26, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Richardson, A.

Witnesses:

Youssef, T. N., Private Citizen

From the Radio Television News Directors Association of Canada:

Haines, G., CITY-TV

Henry, D., CBC-Toronto, Legal Counsel

Stevenson, C., Chairman, CKOC

From the Canadian Bar Association - Ontario:

Castel, J. G., Professor, Osgoode Hall Law School

Gotlib, L., President

Milnes, R. E., Chairman, Business Law Section

Robinson, M., Member, Business Law Section

Stinson, D. G., Chairman, Civil Litigation Section



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, January 26, 1984

The committee resumed at 2:22 p.m. in committee room 1.

COURTS OF JUSTICE ACT
(continued)

Resuming consideration of Bill 100, An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: The meeting will now come to order. It certainly is not your custom, Mr. Breithaupt, to be so tardy and in the light of the fact that we have the press here, it is going to be bad publicity for you.

Mr. Breithaupt: One does what one must.

Mr. Chairman: Before we get into hearing the witnesses, I would just like to remind all honourable members that Thursday evening, February 2, should be kept open for hearings on the architects and engineers bill. These will be next Tuesday and Thursday evening, as well as in the afternoons.

We will now turn to the Radio Television News Directors Association of Canada; Con Stevenson, chairman, RTNDA, news director, CKOC Radio; Gord Haines, news director, CITY-TV; Dan Henry, legal counsel, Canadian Broadcasting Corp.

Gentlemen, would you kindly introduce yourselves and proceed with your presentation?

RADIO TELEVISION NEWS DIRECTORS ASSOCIATION OF CANADA

Mr. C. Stevenson: My name is Con Stevenson and I thank you for the opportunity to be here this afternoon. On my left is Gord Haines from CITY-TV, a member of the committee. Dan Henry will be making our presentation; he is legal adviser at the CBC. One member is not present--Craig Armstrong of the CBC.

I appear on behalf of the Radio Television News Directors Association of Canada. I am specifically here as chairman of a committee of that association, the committee for electronic public access. You have met the committee members who are with me here today. As I said, Dan Henry will be making our submission.

RTNDA is a professional association of news directors in radio and television across Canada. Its purpose is to promote professional development for its members and maintain a standard of personal conduct in the operation of the news and public affairs business. We are here really to make representation for all areas of radio and television--public affairs, education, cable. We are not here for just news alone, although we are here for news, of course.

Mr. Henry's presentation will include some videotape inserts and we have a monitor here for you. It will take about an hour and we would appreciate your questions at the conclusion of Mr. Henry's presentation.

Mr. Henry: Mr. Chairman, Mr. Attorney General, honourable members, under the heading "public access," Bill 100 would deny access to the courts to almost every citizen of this province. Section 146 would prohibit radio and television in all their forms from showing the public what in theory they are already permitted to see. Section 145 in fact declares this theory. "All court hearings," it says, "shall be open to the public." The court can exclude the public if the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

Who is this public? Is it the unemployed, the retired or those who otherwise have time on their hands to spend days or weeks sitting in a courtroom? No. In our view, the public includes all of us, those who work for a living, those who live outside the cities and towns where our courts hold court, those whose lives and livelihoods depend on the decisions made in our courts, judges and lawyers who now wait months for cases to be reported formally, even politicians whose work gives them little time to sit in court but demands that they be aware of the day-to-day developments in our law.

Most people in this province rely on radio and television for their information. Unlike the written press, the electronic media are able to convey events directly to the public they serve, and the public wants us to. What would give you a better report of events in Lebanon, a man's walk on the moon, the assassination of a president--a TV reporter's mere description of those events or that same reporter's report with the pictures and sounds of what really happened? The famous phrase says, "A picture is worth 1,000 words." In our view, it is worth far more than that. The public is more likely to understand, respect and obey laws that it can see operate fairly.

Courts are forums for free debate on the rules that govern all of us. Public confidence in those rules and in our system of justice is vital. You enact those rules and laws, but as a practical matter, no one sees them applied. Ignorance of the law is no excuse, but the proposed section 146 fosters ignorance of the law.

What are we asking for? We are asking for the right to use the tools of our trade to make public information public. Court information is public. Every word uttered is recorded for the public record. We are already free, in fact we are encouraged, to relate to the public as much as we can of what transpires in court. We are already entitled to show pictures of everyone involved. We simply want to match the pictures and the words and convey those words as they are actually delivered.

We are not going to televise every hearing. We want to do a more faithful job of reporting hearings that are already of

substantial public interest. We are proposing to pool our resources and place a single camera at the back of the courtroom, or perhaps a second camera with the judge's authorization, in a fixed position on a tripod--not the many cameras that you see here, no additional lighting, but one camera at the back of the room. The camera is 100 per cent silent, it is electronic and it works with normal light.

Outside the courtroom, outside that calm, dignified atmosphere in the courtroom, we would use a separate room for tape recorders, videotape machines and TV monitors for all interested media. We have already used this setup successfully in Ontario courts a number of times. In the summer of 1982, we were permitted to experiment under the Judicature Act, section 67, the predecessor section to section 146. We recorded over 50 hours of videotape in a variety of courts ranging from traffic court and small claims court to the Ontario Court of Appeal.

We produced a series of five educational items: CITY-TV provided a producer, CBC and Global provided camera crews and CFTO provided research assistance. The law required the items to be educational and to be recorded on the authorization of the judge with the consent of the parties and witnesses. The Ontario Bench and Bar Council, which authorized the experiment, has stated publicly that, "The cameras and microphones were unobtrusive, there had been no interference with the rights of the accused to a fair trial and the dignity of the courts had been preserved." When we presented these items to its special committee on the media, the members unanimously expressed satisfaction with these items.

2:30 p.m.

We want to show you three of these five items. They were originally broadcast in the week of September 13 to 17, 1982, by every English language television station in this province. They appeared in supper hour newscasts so that on Monday night of that week, no matter what station you turned to, you would see item number 1. On Tuesday, you would see item number 2, and so on.

In Toronto, for example, CFTO-TV, CBLT, CITY-TV, Global and CHCH-TV all carried identical programming. Co-operation of this kind among such normally fierce competitors is unprecedented and underscores the importance all of Ontario's electronic media place on this issue. I would like to show you those three items.

The committee viewed audio-visual presentations at 2:31 p.m.

2:43 p.m.

Mr. Henry: What follows are a few minutes of extra interviews with judges and lawyers that were not broadcast, but we thought you might like to see them.

This is not the only broadcasting we have done from our courts. Before this experiment a CBC reporter, Kathy Farrell, ran a series of consumer reports from small claims court. She examined disputes raised there and gave consumers valuable

information about the problems they should avoid. We would like to show you an example of Kathy Farrell's tape. This was done before our guidelines, so the camera is not in a fixed position.

This past summer the Grange Royal Commission looking into the deaths at the Sick Children's Hospital began hearings in courtroom 20 in the Toronto courthouse. The proceedings have been televised through the auspices of our organization. The setup is identical to that we are proposing for regular court coverage--pooled resources, using one or two cameras.

The hearings are very much like court proceedings: witnesses testifying under oath, lawyers examining and cross-examining, a justice of the high court presiding, very important issues being resolved. I would like to show you an example of the coverage we have given the Grange commission.

While we are waiting for the Grange commission footage to come up, I should just mention that to date over seven months of hearings have taken place before the Grange royal commission. There has not been a single objection to the presence of our camera or to our use of the pictures and sounds we have been able to reproduce with the camera's assistance. No one plays to the camera, they are too busy concentrating on the serious matters at hand. The camera has had no effect other than to assist us immeasurably in informing the public.

In the report you will be seeing, towards the end you will see that our reporter, Ted Bissland, is pictured in front of the proceedings; however, he is not in the courtroom himself; he is using a technique called chroma key ; and he is doing that in the studio. It will come up in a moment.

That is our experience in Ontario. Use of pictures and sounds in television and radio reports would have a number of benefits. First, more accurate information. It is very hard to misquote someone when you have an accurate record of what he said. If we have pictures and sounds, we can convey some of the reality of the process. Passion, tension, indifference, weariness, determination, frustration, hostility, meekness, stubbornness--all of the things which make human beings human. Is that not what our courts are all about: resolving disputes among human beings, not merely settling abstract issues of law?

Use of pictures and sound would mean longer coverage and more coverage of our courts. A significant factor in allocating air time is the availability of pictures and sounds. More coverage means more time spent by reporters in court. That means more reporter specialization, better reporter understanding of the process and better reports.

More public attention means a better presentation by all concerned and that means an improvement in the process of justice itself. That is a lesson that has been handed down to us over the centuries in our courts.

In the United States, 41 states have independently considered the issues and now permit some form of electronic public access. Twenty-nine of those states have permanent rules permitting such access and the others are experimenting.

Exactly three years ago today, to the day, the US Supreme Court ruled that television coverage does not per se represent a threat to an individual's constitutional right to a fair trial, provided the proper safeguards are in place. In 1965, the same court had expressed fears that television coverage would prejudice the process. In the intervening years, thousands of cases were covered in various states with little adverse effect. The American Bar Association and the US Conference of Chief Justices have now sanctioned electronic public access, again provided the proper safeguards are in place.

3 p.m.

Where are we in Ontario? After our experiment in September 1982, we produced a brief addressing the issues. You have a copy of that brief. We noted that section 67 of the Judicature Act, which is the predecessor section to section 146 of Bill 100, was brought in in 1974. This section, and section 146, are based on a canon of the American Bar Association, which the association itself has since changed.

Our brief proposed a four-page set of guidelines to govern electronic media behaviour in court. The guidelines would be adopted as rules of the court. We also proposed repeal of section 67 of the Judicature Act and we took what we felt was a responsible route. We asked the Ontario Bench and Bar Council for its support. That was November 1982. Since then that body has sent a delegation to New Jersey and to New York to investigate.

In September 1983, it produced a background paper and questionnaire and circulated them to all judges of the province, the Law Society of Upper Canada, the Ontario branch of the Canadian Bar Association, the Criminal Lawyers Association, the Advocates' Society and the Canadian Civil Liberties Association. The background paper reviewed both the Ontario experience and the US experience. In the latter regard it said:

"Correspondence with representative chief justices indicated there had been no significant problems or mistrials resulting from television coverage of the courts. It was used primarily for short news reports rather than lengthy telecasts of proceedings. Any adverse effect on the conduct of proceedings was not considered to be significant."

New Jersey had questionnaires completed by the judge, counsel, witnesses and jurors as to the effect of the cameras and the personnel operating them. These questionnaires have demonstrated very little adverse criticism. Just after the paper and the questionnaire were sent out in late September 1983, the Canadian Judicial Council met in St. John's, Newfoundland.

One year earlier, that council had met in Regina and at that time our experiment in Ontario was on the air. They asked a

committee of theirs to look into it. That committee asked for copies of our brief but never heard any representations from us, although we were enabled to address judges in five provinces, some of whom may have been on the judicial council's committee.

We wrote Chief Justice Laskin asking to be heard at the Canadian Judicial Council meeting in Newfoundland in September 1983. He wrote back that it would be premature that year, given that the council's committee had not yet submitted its report. The rest is history. The council did not feel it needed representations from those directly involved. It passed a resolution that television should not be allowed in court proceedings.

It was not a high-water mark for Canadian justice. We were naturally disappointed but we were and are confident that the Canadian Judicial Council will have cause one day to reconsider this issue.

In my experience, having addressed many judges on this, even those who oppose it say that it is inevitable, that it will come. However, too many of them say, "Not now, not while I am on the bench." They are concerned, naturally, with the thought of additional scrutiny, but is not that scrutiny supposed to be there? If you look to pronouncements by judges in their professional rather than their personal capacity, they are eloquent in their understanding of the need for scrutiny.

In the leading case in Anglo-Canadian law on the subject of open court, Lord Shaw of the House of Lords quoted Jeremy Bentham, a famous and widely regarded legal scholar. He wrote, "Publicity is the very soul of justice. It is the keenest spur to exertion and surest of all guards against improbity. It keeps the judge himself, while trying, under trial."

In November last year, the resolution of the Canadian Judicial Council was communicated to every chief justice and Attorney General of each province, as well as to the federal Minister of Justice. It is binding on no one but obviously has influence.

Shortly after receiving it, the Ontario Bench and Bar Council special committee on the media convened to consider it. We were later advised what happened. The view stated on behalf of the Attorney General was that the Canadian Judicial Council's view was so strong, definite, unqualified and final that it would be very difficult for him to adopt a contrary position unless there was some overwhelming evidence that the council's position was contrary to the public interest.

However, there did not appear to be any evidence that was the case. The law society did not want to spend the money to send out the questionnaire to its members as it had been asked to do two months earlier in September.

The committee passed the following resolution: "In view of the indication from the law society that it did not wish to send out the questionnaire to its members; in view of the opinion

stated by the representative of the Attorney General; and in view of the communication from the chief justice of Canada, the distribution of the questionnaire should not be proceeded with."

By that time the questionnaire had already been circulating for two months. From all reports we have had the questionnaire produced mixed results, both in favour and opposed. What else would anyone expect?

The Ontario Bench and Bar Council said it would not proceed with the questionnaire. That is its position. What does it mean? We do not know. It has been more than a year since we presented our brief to that body and we still have not received any detailed and reasoned response to it. The matter, from our reading of it, is on hold.

So where do we all stand? Chief Justice Howland is a man for whom we have the highest regard. In May of last year he was quoted in the Sunday Star as having said, "In this day and age it (this matter) has to be studied." Attorney General Roy McMurtry was quoted in the same article last May: "I favour the idea of some TV in our courtrooms, but the manner in which it is done is of crucial importance."

The article goes on to say he praised the responsibility shown by our association and said our proposals deserved serious consideration. He said any electronic access system must be structured so as not to interfere with the testimony of witnesses, but added that last fall's experiment showed it could be done without causing unnecessary distraction.

We believe the Attorney General's position has not changed. The problem is the Canadian Judicial Council's position. Is it contrary to the public interest? Clearly. It was devised in private, without a hearing for the media and the Canadian public affected by it. We do not know how many chief justices voted for it, against it or abstained and we do not know what the reasons for the decision were. If it was a judgement which came up on appeal before the same judges who voted for it they would throw it out quickly without a second thought.

Yes, it is strong, definite, unqualified and final--but that is its weakness, not its strength. If television were not allowed in court proceedings, it would mean we would not be permitted to see the Supreme Court of Canada deliver the pivotal constitutional reference which television and radio carried live to millions.

Hon. Mr. McMurtry: Almost carried live.

Mr. Henry: Subject to technical considerations.

Neither would it have allowed the public to see the Supreme Court of Canada's leave-to-appeal proceedings transmitted via satellite from Vancouver to Ottawa. Both of these we have already seen courtesy of the electronic media, and in the latter case courtesy of the Canadian Bar Association. That body very proudly went on television saying what a wonderful idea it was.

The public could not see the items we just showed you, the items we produced and broadcast to the satisfaction of everyone directly involved. The Attorney General has not followed the position of the Canadian Judicial Council.

Section 146 permits more than the council would. In effect, by proposing this section 146, the Attorney General has himself already taken the position that the Canadian Judicial Council resolution is contrary to the public interest. That is as it should be. Courts are presided over by judges but they belong to the people and are responsible to the people's representatives.

3:10 p.m.

What is in the public interest? Not section 146 in its current form. In our view that section is clearly unconstitutional. Subsection 2(b) of the Charter of Rights and Freedoms states, "Everyone has the following fundamental freedoms: Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

The Ontario Court of Appeal has already considered whether this section includes the right of public access to the courts. In *Re Southam and the Queen* (No. 1), the court's judgement states as follows:

"It is true, as argued, that free access to the courts is not specifically enumerated under the heading of fundamental freedoms but, in my view, such access, having regard to its historic origin, and necessary purpose already recited at length, is an integral and implicit part of the guarantee given to everyone of freedom of opinion and expression which in terms, includes freedom of the press. However the rule may have had its origin, as Mr. Justice Dickson pointed out, the 'openness' rule fosters the necessary public confidence in the integrity of the court system and an understanding of the administration of justice."

There is a distinction in the charter between freedom of the press and other media of communication. Clearly, the unique attributes of the electronic media are recognized and distinguished. If those in the electronic media have freedom of expression, surely the charter recognizes that they have the freedom to use the tools of their trade to express themselves. That means freedom to use pictures and sounds in conveying information. Combined with the right of free access to the courts, that means electronic public access to the courts. That is a fundamental freedom.

The charter recognizes in section 1 that there can be limits on a freedom provided those limits are reasonable, prescribed by law and are such as can be demonstrably justified in a free and democratic society.

Section 146 of Bill 100 is a limit on electronic public access to courts and, according to the Ontario Court of Appeal judgement referred to earlier, the onus is on you to justify that limit, not on us to justify our freedom.

The Court of Appeal said: "The wording imposes a positive obligation on those seeking to uphold the limit or limits to establish to the satisfaction of the court by evidence, by the terms and purpose of the limiting law, its economic, social and political background, and, if felt helpful, by references to comparable legislation of other acknowledged free and democratic societies, that such limit or limits are reasonable and demonstrably justified in a free and democratic society."

We believe section 146 cannot be demonstrably justified. If we are right on any one of our rationales, then the section as a whole must be struck down.

Again the Ontario Court of Appeal: "We are not entitled to rewrite the statute under attack when considering the applicability of the provisions of the charter."

Section 146 is an absolute ban. In the Southam case, the Ontario Court of Appeal held that an absolute ban in all cases was not a reasonable limit on the right of access to the courts. The net must be cast just wide enough to catch the purpose it serves. With section 146 it does not matter how important the case is to society or whether the accused who screams out his innocence demands that the public see what is being done to him. It does not matter whether the judge feels the case before him cries out for public attention. Even if every person in the proceeding agrees that it should be televised, it cannot be unless it is for an educational purpose.

Imagine, in a free society, all the adults involved in a case do not have the freedom to have their case brought to public attention. What can be the demonstrable justification for limiting coverage to educational, rather than informational purposes? What is the difference between those two terms anyway? What is the demonstrable justification for denying electronic public access to the judgement rendered orally by the trial judge, or the legal argument that precedes it or the proceedings of any appellant court?

What is the demonstrable justification for requiring the consent of every party and witness? Should any one of these be able to dictate on a whim what information the public gets about the operation of the public's laws and the public's courts? None of them has that automatic right to stop the flow of that information in the press. Why should they have it with regard to the electronic media? In short, what is the demonstrable justification for denying the electronic public access to an open and public court? There is none.

Virtually every serious study of this issue, all the extensive surveys of participants in hearings that have been reported electronically, come to that same conclusion. The evidence is overwhelming if only the parties involved here would look at that evidence. The major studies are referred to in the brief we submitted to the Bench and Bar Council in November 1982, which we have now provided to each of you.

Finally, what is the demonstrable justification for making

the normal exercise of a fundamental freedom, freedom of the media, subject to an offence with a stiff fine or a potential jail term? Section 146 would put radio and television reporters in jail for doing their job responsibly.

We have been presenting this issue responsibly for over three years. We are not prepared to suffer further questionnaires or protracted debate on our constitutional rights. As we speak, Ontarians are being denied meaningful access to their courts. We believe that section 146 should not be enacted. That would leave section 145, which would declare that our courts are open to the public, subject to subsection 145(2) and rules of the court. We propose that the guidelines we submit herewith, the guidelines we have already used successfully in Ontario, be adopted as rules of the court.

If you want to proceed cautiously, we would accept a suspension of the operation of section 146 for a trial period of 18 months. You could monitor our progress and, if serious problems emerged, you could allow section 146 to take effect after the trial period. We are prepared to meet with you at any time to reconcile your concerns with ours. We understand the desire of some for speedy passage of Bill 100. We trust you will agree that it is in no one's interest to pass quickly a law that so clearly disregards the constitutional rights of the electronic media and of all the citizens of this province.

Mr. Mitchell: Mr. Chairman, I want to assure the people who have made the presentation that I have not formulated an opinion on whether I am for or against your proposal. In the material you have provided I have a lot of reading to go through.

I want to ask basically one question. Do those of you appearing at the table also support the right of people to a degree of privacy?

Mr. Henry: Sir, in the United States--

Mr. Mitchell: No, answer--

Mr. Henry: I am going to answer your question. We believe that when it comes to a court proceeding, the right of privacy is very severely circumscribed, and in that regard we have the support of the Supreme Court of Canada and Anglo-Canadian law. Let me read you a few quotes from judgements that go directly to your point.

Mr. Mitchell: May I just interject at the point you made, though? I gather your argument is, as you started off, that because people have wound up in the courts, they have removed themselves from the privilege, if you will, of some degree of privacy. Let me give you an example, and it was debated in this Legislature as well.

Recently there was a young lady in Ottawa who refused to give testimony in a court. The young woman went to jail for a period of time, but, for whatever reasons, the press and the electronic media felt she had a right to privacy; so when she had

a press conference, your colleagues in the electronic media were very quickly willing to afford her the right to privacy, which you say she had already done away with by appearing in court.

3:20 p.m.

Mr. Henry: May I answer that specific case? In that case the law would now provide that we would not be able to identify that person in that proceeding. We would not be able under another Canadian law, the Criminal Code, to show a picture of that person, so that person's privacy is already respected by Canadian law.

That is a very important case. I remember watching The Journal program, which debated the contempt conviction imposed by the judge. Who did we see debating that? We saw lawyers, but we did not see the judge. We did not hear the judge. We do not know what his reasons were. We have to take them secondhand. Do you not think it would have been a lot better to be able to hear what that judge said? What possible prejudice could there be against showing that judge?

Mr. Mitchell: In all honesty, I have not formulated an opinion one way or the other, but I have a feeling that the very things you are arguing for could at the same time be things you would argue against when we are talking about the rights to privacy of individuals. That is where I have some measure of difficulty.

I also would refer to your last sentence. I grant you say this has been ongoing for some time and you have been presenting briefs for some time, but this is the first time I have been privileged to hear them and see what was televised. By the way, I might tell you that in September 1982--and I am a very avid watcher of the news--you made a comment earlier on that this was played on every English language television station?

Mr. Henry: Yes, sir.

Mr. Mitchell: I do not recall seeing it on ours in Ottawa. Maybe I was blind that night.

Mr. Henry: It was certainly shown.

Mr. Mitchell: I watch Max and the whole bunch regularly, so I may have been blind that night, but I certainly do not recall it.

Mr. Haines: It was on five nights in a row, sir.

Mr. Mitchell: Yes, I know that is what you are trying to tell me. You do, however, in your last paragraph say, "It is in no one's interest to quickly pass a law." Surely that sentence can be turned around to say, "It is in no one's interest to jump on the bandwagon in this committee today and say we agree or disagree with your position." As a member of this committee, however, I can assure you the material you have provided will be given a pretty good and thorough study.

I also have some fears--and I tell you this quite honestly--I know that as reporters you are taxed with the job of reporting and telling people what is going on. I can see that need when there is a situation involving something that is of vital interest to the people of Ontario or the people of Canada. But who decides whether something is of vital interest? I do not know. I certainly would not want to put myself in that position.

I have also seen cases myself where people have had an internal problem in the family. Sometimes I have developed a feeling there are people--and I am coming back to the privacy issue--who have a right to expect some privacy, some acknowledgement that they are going through a bad time. Yet they are hounded at every instance. I do not mean to make that a blanket statement, but that is why I want to study this material very carefully, to be sure the position I might take on behalf of the people of Ontario is what you are telling me is in the best interests of those people.

Mr. Henry: On the point of privacy, I might just read you what the position in our law is. This is from the House of Lords:

"The hearing of a case in public may be, and often is, no doubt, painful, humiliating or deterrent, both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means of winning for it public confidence and respect."

Mr. Gillies: I would like to congratulate you gentlemen on a very comprehensive presentation of your case. Just speaking as one member, I do not have a great problem with what you are saying. I can think of some specific problems, many of which obviously have been worked out in other jurisdictions and probably could be worked out here.

I have a couple of questions for you, none the less. I was reading through your proposed rules of court governing electronic public access and I want to look particularly at points 7 and 8 on your list. I was very pleased to see you are proposing that no tape or film of a proceeding would be admissible as evidence, which I think is good. However, do you think it a legitimate argument that with a very wide spectrum of the public watching proceedings that would be coming up during news programs, as clips in the evening, it would possibly make it more difficult to find impartial jurors who have not developed an opinion on some proceedings because of that increased coverage?

Mr. Henry: That question has been dealt with in every jurisdiction that has considered the issue. I think the answer is yes, it may be slightly more difficult. It depends when that next trial is going to be, if there is going to be a next trial. It is often some days off. But there are other protections that we have

in our system for getting impartial jurors. Do not forget, all we are looking for in society are 12 honest people who say they are impartial as between the person involved and the crown. If you are weighing sending information to millions of citizens who may be affected by the law that is developed in that case versus the possibility that there may be a retrial--and how often is there a retrial?--and the possibility that out of millions of citizens or hundreds of thousands in a community you will not be able to find 12, I would much rather give the information to the public.

Jurors are sworn to pay attention only to the evidence they hear, and that is one of the protections. There is also a screening mechanism to ensure that the counsel involved in the case can cross-examine the jurors to make sure they are impartial.

Mr. Haines: The facts in the case are already going to be public, given the existing system, so all we are talking about is a more efficient and more accurate way of delivering the information from the courtroom.

Mr. Gillies: I actually think this is a very compelling argument for your case, that in a way we do have a double standard now inasmuch as, unless otherwise ordered by the court, the print media can be in the proceedings and you have your cameras and reporters outside the proceedings. In all likelihood I would think most accused, defendants and others are cropping up in the media anyway.

However, on point 7, you say that to protect the lawyer-client privilege the right of the media to broadcast certain discussions that may take place within a courtroom setting, in a privileged setting, would be curtailed. I imagine you would probably also include in that category some types of discussion the judge may have with counsel when he calls counsel to the bar and so on.

You do not say what happens in the event that a reporter breaks that rule. In other words, I do not know what the sanction is if, either deliberately or inadvertently, a conversation that takes place is taped and is aired, even though it is not the intent of your rules that this happens. What is the sanction and how do you propose that would be dealt with?

Mr. Henry: We have not proposed a sanction, but we would understand if there were one. I think the judge in the case would have the authority to cite that person for contempt, subject to what changes are made to contempt law by Mr. MacGuigan.

Mr. Gillies: I do not know if I should be directing this question to you or to the Attorney General. We all have in front of us now the letter from Chief Justice Howland to yourself and the letter from Chief Justice Laskin to the Attorney General, and both of those really say the same thing, the decision of the judicial council in the meeting in Newfoundland being, "We do not want it." I would like to know if anyone is in a position to tell the committee, beyond the fact that they do not want it,

what are the arguments? I would like to hear what compelling arguments have been made by the judicial council against this type of reporting. Do we know what those arguments are?

Mr. Henry: The arguments that are set out on behalf of those who are against are dealt with briefly--and if you like we can turn to those--on page 16 of our brief. This is the brief we submitted to the Ontario Bench and Bar Council in November 1982.

3:30 p.m.

Mr. C. Stevenson: Excuse me, Mr. Gillies, I am not clear. Are you asking the reasons on which the judicial council based its resolution?

Mr. Gillies: Yes.

Mr. C. Stevenson: So are we. I do not know that myself.

Mr. Gillies: Unless I am missing something, all that we have is a series of letters saying, "It is our decision that we do not want it."

Mr. Henry: As far as we are concerned, we have not heard from the Canadian Judicial Council personally and we do not know what its reasons are. The brief addresses the kinds of reasons that have been raised in this debate in US jurisdictions. Physical disruption of the courtroom, for example, is one of them, and that is something I hope we have dispelled; certainly the Ontario Bench and Bar Council has gone on the record saying that we did not disrupt the process. Distortion of the image of justice: what kind of image of justice are we presenting? Prejudicial publicity, the point you raised earlier; the right to privacy, the point raised earlier; and the effect on the participants. Those are the categories.

But when it comes to hard evidence, if you look at all of the surveys that have been done in the United States that have said, "Look, these are the things we fear," what has actually happened? Thousands of cases have been done in the United States. There is evidence now. We do not have to guess; we can look at the evidence, and the evidence is overwhelming that most of these are just fears without foundation.

Mr. Gillies: One last question if I might, Mr. Chairman. I will address this to the Attorney General. Although I do not want to put you on the spot, I am looking at page 15 of the presentation made to us today. In the opinion of the witnesses, by proposing section 146, you are taking the position that the judicial council's resolution is contrary to the public interest. I wonder if you might comment on whether that is a reasonable representation of your position because I am always a little concerned when delegations interpret for members of the House.

Hon. Mr. McMurtry: No, I have to say, with respect, to the very articulate submissions made by Mr. Henry, this does not accurately reflect our position. This draft, of course, was prepared long before the letter came from Chief Justice Laskin

representing the views of the Canadian Judicial Council. I guess one of our dilemmas is whether to maintain the status quo, which, as has been quite properly pointed out, does reject, at least in part, some of the decision of the Canadian Judicial Council, inasmuch as we have allowed cameras in the courtroom for educational purposes and have done this quite consistently.

I suppose it does not take too literal a reading of the relatively brief letter from Chief Justice Laskin to indicate, as Mr. Henry has pointed out, that section 146 obviously does not reflect the views of the Canadian Judicial Council inasmuch as it allows television in the courtroom for educational purposes. Again, we are going to have to reflect over the next few weeks as to whether I as Attorney General should feel morally bound to accept the very strong recommendation of the Canadian Judicial Council in all respects.

What we have attempted to do in the Courts of Justice Act is basically to maintain the status quo. We have not changed the law. I might say at this juncture that I thought the series on the various trials in the courtroom that was presented over a week, a good part of which we have seen this afternoon, was an excellent series and represents a very valuable tool for educating the public as to what does happen in a courtroom. As a ministry, we certainly co-operated in agreeing to that project.

More recently, we have agreed to co-operate in relation to another series that is being produced, as I recall, by Mr. Patrick Watson for the Canadian Broadcasting Corp. dealing with a series of trials, which will take an in-depth look at trials. Again, we recognize that for educational purposes, at least, there is a public interest component that I think has some weight.

Our position consistently has been that cameras in the courtroom, at least for educational purposes, do serve as a very useful tool. There are some other comments I want to make later on, but I prefer to hear the rest of the questions. I would say we do not have any difficulty with the technology that has been developed. We think a very effective effort has been made that has succeeded in developing technology which does represent a minimal disruption, if any disruption at all. I am going to refer later on to some of the concerns that have been expressed on both sides of this issue.

When one deals with an excellent educational program produced by the television networks in co-operation with one another, one has very little difficulty appreciating its value. However, the issue becomes a little more complex when one compares those worthwhile programs with the 30-second clips. In all likelihood the latter are the most of any court proceedings that most people will see on any given day. The issue becomes a little grayer in that context. But certainly the principle of public access to the courtroom is a very important one and one we support.

I would just like to ask one more question because Mr. Henry has referred to certain important British authorities regarding public access to the courtroom. I was just wondering whether I am

correct in my assumption that the British courts to date have not allowed any television cameras in the courtroom. That is my understanding.

Mr. Henry: There is a rule that would say that.

I was privileged to be a marshal to a high court judge in England, Sir Brian McKenna, for a month and a half on circuit in Oxford and in Staffordshire. There is a rule that does not allow you to take a camera physically into the room whether you use it or not. When I spoke to him recently about whether or not having cameras in court was a good idea, he suggested to me it was. I think they trail us in North America. The House of Lords is just now considering the issue of televising their proceedings.

Hon. Mr. McMurtry: But am I correct in my assumption that to date television cameras have not been allowed in UK courtrooms?

Mr. Henry: That is right. Our point is that the principle of public access is the same. How does one differentiate between the public that sees our television reports and the public that reads the newspaper?

Hon. Mr. McMurtry: There are some other issues I would like to discuss, for my own enlightenment as much as anybody else's. But perhaps it would be appropriate to go to other members for questions now because this is a committee hearing.

Mr. Gillies: Mr. Chairman, that concludes my questioning.

Mr. Chairman: I would remind the committee we have a few other witnesses, and the next question will be from Mr. Renwick.

Mr. Renwick: Mr. Chairman, as usual I will be brief.

Interjections.

Mr. Renwick: They do not need compliments from me about the excellence of the presentation. It is a very stimulating and interesting presentation. I have two or three matters I would phrase as questions, even though sometimes I tend to make statements rather than ask questions. Treat them, please, as questions.

3:40 p.m.

Personally I have never thought of the provision for making the courts open to the public as being related to the question of freedom of expression and opinion. I had thought it was to ensure there be no secret trials anywhere. I am sure other authorities would disagree with this particular authority, but it was my view that was the historic origin of that question, and it is not necessarily connected with the question of freedom of expression, freedom of speech or freedom of the media; that is my first question.

My second question is that I have absolutely no problem with

the capacity of crown counsel or defence counsel in civil matters, in criminal matters or with the judiciary, or indeed for practical purposes, perhaps with some limitation, with jurors as such who are not vocal participants in the proceedings in the court, about them being able to perform with the kind of media which is available. I think that soon becomes part of the wainscoting.

My problem relates perhaps to a more fundamental question. Abstruse questions of law are not the most exciting part of the judicial world, of the court world. The problem to me is with the evidence. The judge when he is sitting alone, and the jury when it is a trial by jury, have the responsibility of determining the facts of the case or, if you would, the truths of it on the basis of evidence given by witnesses, sometimes documentary evidence but basically the evidence of witnesses.

I would like you to address that question. When you take the wide variety of persons who, out of a totally different context, happen to find themselves once in a lifetime as a witness on a stand, whether in any way you then affect the question of the capacity of the court--judge or jury as the case may be--to determine the truth of what is before the court on the basis of the evidence.

I notice there was no reference in any of those tapes to any of the witnesses and, indeed, the one crown counsel who was questioned ducked the question as to whether he thought it affected the witnesses. That is the second point I would like to make.

The third one is that I do not get any real sense, except on page 3, of any test of selectivity that the media would be using. In other words, we are not going to be broadcasting every case in every court in full. There are not enough channels in the world to do it. You specifically say: "We are not going to televise every hearing. We want to do a more faithful job of reporting hearings that are already of substantial public interest."

I must say without specifying but we can all recall within the past two years three or four areas when I would assume that, if the television media had had access, they would have been there. There were enough problems when they were not there with respect to the functioning of the judicial system. I have some problems about who is going to do the selecting and what the process is of the selection that is going to take place.

It is not a single question of who is going to select which trial. It is a multiple question: Who is going to select the trial; what portion of the trial is going to be broadcast; who does the editing of it; is it going to be day by day or is it going to be at the end of the trial, in other words, a carefully edited version of a whole trial for the purpose of conveying to the public what they should know about it? Those elements of selectivity seem to me to be crucial to the presentation. I see little, if anything, in your submission on that area.

Those are the three automatic problems I have. I have no specific position on the matter one way or the other. I am a

strong proponent of having cameras in the assembly, but for reasons that are best known to the government, we have not been able to achieve that, except during question period.

I hope I have made those three questions clear to you, because it seems to me they go quite near to the roots of what is involved in the submission you have made.

Mr. Henry: I will address those issues in succession. First is the historic origin: What is the purpose of having the public there? There is a reference in our brief to the writings of Sir Thomas Smith in 1565.

Mr. Breithaupt: It is a thing called the Star Chamber.

Mr. Henry: At any rate, he was describing our system, the common law system. He was comparing the civil law system with the common law system. He said that while in both systems the indictment is in writing, in the English system:

"All the rest is doone openlie in the presence of the judges, the justices, the enquest, the prisoner, and so manie as will or can come so neare as to heare it, and all depositions and witnesses given aloud, that all men may heare from the mouth of the depositories and witnesses what is saide."

Historically, there were no select juries. The whole community was the jury. Gradually, the jury function was delegated to 12 men. But the community obviously has a very vital interest in knowing what takes place in every courtroom. You do not have to look too far in Ontario law to be able underscore that point.

The contempt cases we talked about were the subject of great public debate across this province and this country, whether a judge should have the power to commit a person who does not want to testify for contempt for 30 days or three months. Such a case does not only affect the few people who happen to wander into the courtroom that day; it affects everyone in society.

The second point you raised was your concern about evidence and the effect on witnesses. If you look at the experience in the United States referred to in our brief, the effect is quite clear. There is no effect, because the witness is a little ill at ease anyway. He does not want to be in a courtroom, does not want to be on the public record, does not want to have his words reported in the newspaper, does not want all that.

Taking that into consideration, the camera blends into the background. It is another way of recording what that witness is testifying to publicly. There was a case in California where a person saw a witness give testimony from his home via television and ran down to the court to show that witness was actually perjuring himself. The wider the information, the better the chance the witness will be careful what he says and say exactly what happened.

There is a reference in the brief to a study that was done, the only scientific study in this area. It compared a witness's

reaction to three different types of media. The people in the group were shown a very complicated film about the post office in Germany. These were people in the United States so they could not have cared less. There was a lot of detail. They were categorized into three different options.

One option was where the interviewer interviewing them about the film they had just seen said he would be taking notes, but would transmit the information to the public or to a wider audience. The second group was told there was a mirror behind the interviewer and behind that mirror was a camera and those photographs and sounds would go to a wider audience. The third group was witnesses who saw the camera in the room. Then they compared the questions--

Mr. Breithaupt: They drew their own conclusions.

3:50 p.m.

Mr. Henry: That is right. No, excuse me. They were told the same thing, that it would go to a wider audience. In one condition, there were just notes; in the second, the camera behind a mirror; in the third, the camera in the room. The information they gave, the recall they had from that film, was not very different in the three categories. There was only one difference: When they saw the camera in the room, they gave slightly longer answers and their longer answers contained more truthful information. That is an indication that perhaps it enhances the fact-finding process.

On the question of selectivity, while it is difficult, that is an issue that must be one in which you come down in favour of a free press and free media. I do not think you want judges, lawyers or yourselves sitting on a committee saying what the public should be entitled to hear about their proceeding. By the way, in terms of how much information is published, there is no requirement that a newspaper print an entire transcript of a court proceeding. It would be impossible for people to absorb that kind of information. Somebody has to make the decision. It should be the people in the business of knowing what the public wants to hear.

The only thing I would mention which is in our material is the reference to the background paper of the Ontario Bench and Bar Council when you talk about the short excerpts. In their review of the US experience, they said electronic public access was used primarily for short news reports rather than lengthy newcasts of proceedings. "Any adverse effect on the conduct of proceedings was not considered to be significant." That is the US experience, via the Ontario Bench and Bar Council.

The Canadian perspective is slightly different. The Canadian media have far more opportunities to present more information. We have the Canadian Broadcasting Corp. in Canada. They do not have the equivalent in the United States. We have TVOntario, which can present long excerpts. We have current affairs programming which is quite extensive and can use a lot more of this material than can news programs. We have the opportunity to get the information out. That is why we are suggesting in our proposal at the end, if

there is a little queasiness, to let us have a trial period. You can monitor the progress and see if there are problems.

Mr. Renwick: I appreciate your responses to my three concerns. I will not say they have answered them all, but I do appreciate them.

Mr. Henry: For greater detail, we would ask you to read our brief. There are a lot of references to background studies, both pro and con, and you may wish to look at those. If you need copies of them, we would be glad to provide them.

Mr. Haines: There is one thing it is important to remember. You made the comment that with certain high-profile cases over the last year or so there were enough problems and they did not require anything like a camera in the courtroom. The coverage supplied in those situations was there anyway and all the addition of a camera would do would be to improve that coverage and make it probably more accurate and more reflective of the proceedings.

The Attorney General mentioned that one of his difficulties is the use of 30-second clips, to use the quote. That happens now, but that 30-second clip is a reporter's perception of what happened in the room or it is an artist's drawing. What we are saying is, let us use 30 seconds of reality. We think it will be more accurate that way and there will probably be more coverage as a result of that. The reason it is limited to 30 seconds in many cases is that is all you could really do with what is available.

Mr. Renwick: I appreciate that. Any objective assessment of the question you have raised must look at it as to whether or not the problems to which I referred would have been alleviated, in a sense, by the presence of electronic media.

Mr. Haines: I believe some of them would. I think in terms of accuracy--

Mr. Renwick: I do not know the answer to that, but I still will have to think, in the light of my concerns and the responses which have been made on that connection that appears automatic to you, of the issue of the charter. I had never thought of it in those terms, despite what the distinguished jurists have said. I thought of it more on the question of making certain that no individual person is subject to a secret trial.

The second one, the question of the effect on the witnesses, is to me paramount. I do not care about politicians in the assembly. I do not care about lawyers and judges in the courtroom. I commented with respect to the jury that the jury is a silent participant which then must leave and make its assessment in private of the determination of the truth of the question. That is a vital concern.

The third one is the question of who is lucky enough to have his cry of innocence heard by the public on the question of selectivity. Does everyone have the right to have his cry of

innocence heard or, using your terms in your brief, only a select number of persons? Those seem to me to be prima facie concerns.

Mr. Henry: One other point which should be raised on the issue of the witnesses is the Grange commission. There have been witnesses there in front of a television camera in this province for seven months. If you have the power to do so, why not ask Mr. Justice Grange? Ask the lawyers involved. To my understanding, there has been no effect on those witnesses other than perhaps to make them slightly more aware that what they are doing is giving testimony in public which, after all, is the purpose of the process.

Mr. Renwick: Certainly, I would think it would be a very good mirror to test many of the serious questions you raise when it is all over and completed, which will be some time.

Mr. Haines: In terms of your concern about selectivity, that already takes place. The system is already there. All we are looking for is the right to be able to exercise our part of that system properly and more accurately. The coverage is there now. The selection is already there. The editorial decisions are already made every day.

Mr. C. Stevenson: I wanted to make one final point. It seems the greatest fear, when we get to the debate, is how we will do it. How do we do it now? I ask you to consider how you get your news every day, and how you receive your news through radio, television and newspapers. We muddy the waters when we talk about the short news blurb, piece or digest. If you look at your newspaper, take a look at the shortness of the items for space. We all absorb short digests, stories, perceptions, compressions. That is how we get our news now. Do not be so sure that a short news story on radio or television is not an effective way of getting your news because it is. We do it every day, and you are consumers of it.

What we are asking for is more accuracy with our sound and pictures for court coverage. We are still going to do our short digests, just as newspapers will do their short pieces every day as well.

Mr. Laughren: I was concerned about the selectivity thing. I do not know why I am uneasy, but I am. I suspect there are a lot of members who feel as I do, uneasy about the whole idea. I would have difficulty making an argument to you as to why I am; but I am. Mr. Renwick has addressed some of the things I was thinking of about selectivity. That bothers me too, because it is a different medium. In a newspaper, the selectivity partly is on the part of the reader, more so than with television once the newscast is on. There is a fundamental difference there.

On the other hand, I was very impressed to see that you work with normal light. In the Legislative Assembly chamber, at the end of every question period I am convinced I feel the early stages of both glaucoma and cataracts given the incredible lights there. I would hope that with your persuasion and ours perhaps the stupid system with the lights will be changed. According to you, you can do it with normal light.

Mr. Haines: To address your feeling of uneasiness, it is quite a natural one when you are dealing with something you have not had an experience with and that you had not been exposed to in the sense of a camera in a courtroom.

Mr. Laughren: We have seen selectivity in the chamber.

4 p.m.

Mr. Haines: Certainly, but that is a different forum. What we are talking about is the kind of coverage that would come out of a courtroom. That is the concern. It is something that people in this province have not been exposed to as yet in terms of members of the legal community and members of the judiciary. Certainly, there is a feeling of uneasiness when you are dealing with what for them is the unknown. I do not think it is a new feeling, but the best way to get over that feeling is for a trial, experimental period to see how it works.

That is all we are suggesting. All we are asking for is the opportunity to demonstrate that we that we think it will work effectively.

Mr. Elston: My question basically comes back to the same point, the uneasiness about the selectivity. The other side of that question is when you mentioned the defendant's cries for public justice as to what the system had done for him.

If you were allowed in the courtroom, what is the role you anticipate the electronic media playing in terms of alleviating the cry of the defendant for some public redress during the trial, before the decision is made, before the appeal process has been determined, and before his guilt or innocence has been established? How will your activity in the courtroom be able to get redress for that victim or that defendant's cry for redress?

Mr. Henry: That defendant will be ensured that with all the public attention, the people involved will do their best to present the case properly, to listen to the case properly and to give him justice. That is the lesson of--

Mr. Elston: Somehow the electronic media will be able to translate that into some aspect of the decision that is made either by the jury or by the judge.

Mr. Henry: That is right.

Mr. Elston: How?

Mr. Henry: By getting it to public attention. The judgments I read from United Kingdom and Canadian law have taken the press into account because that is all there used to be. Now people do not just read the press; they do not just get the news from their press. In fact, a surprising number of people rely just on radio and television to get their news.

Let us compare the media. In television, if you take the words in a 30-minute newscast, they will perhaps add up to one

page of a newspaper. Words are not enough to convey the information in television. You need the pictures and the sounds. A picture conveys a lot of information in a short time and so do the sounds, not to mention the fact they convey it accurately.

Mr. Elston: Right now our system really is based on the idea that the 12 people or six people, or the one person sitting in judgment are to rely upon, generally speaking, their perceptions, both audio and visual, and those perceptions created by authorized technical materials which are allowed in as part of the evidence.

What you have just indicated to me is that this recording which is to be done in the courtroom by the electronic media is somehow to have a role to play in the decision-making process which those jurors and judges are to be involved in.

Mr. Haines: Not at all. Those people are going to make their decision based on what they have heard in the courtroom. What we are suggesting to you is that, in that case, you have 12 people who go into a room, discuss what they have seen and hopefully come up with a true finding based on the facts they have seen.

Our concern is that what you see as a member of the public is one person's perception. We do not have 12 reporters in there, but we can be a lot more accurate if we can show you exactly what happened. Then as a member of the public you can decide what you want to make of those facts.

Mr. Elston: Right now the problem is that when a defendant is convicted or loses a cause in court, you are indicating to me now that basically the electronic media is not able to convey to the public in general the sense of frustration.

Mr. Henry: After the case is over, we can add it all up and show the public exactly what that man or that woman was exposed to.

Mr. Haines: If it appears warranted.

Mr. Elston: What you are really able to do is to provide the ability for me to sit back in my home town of Wingham and follow the decision of the judge that he delivers with respect to a trial in Toronto or Sudbury or a contempt sentencing in Ottawa.

Mr. C. Stevenson: Exactly the way he delivered it, if he raised his eyebrow or if he smiled or whatever.

Mr. Haines: The problem is, in dealing with television as a medium, if someone drones at you for 60 seconds straight trying to explain to you what happened in a courtroom, your concentration is not as great as if you can see what is happening at the same time. There is a lot more information, and more accurate information, that can be imparted that way.

As people who work with that medium, we know that if we go for a long period of time with what we call a voice-over and we

are using an artist's conception or picture, we are going to lose people's interest. Even if they happen to be interested in following the results of a particular trial, they are going to miss a lot of information that is going by them.

Mr. Elston: But then there is a question you have to deal with in terms of selectivity, and that is when you start to bring your media into the court facility. I can imagine there would have been very few people available for the trial in a community north of here until the time when a young lady was sentenced to several months in jail for refusing to testify. I can see at the time the decision of the judge was delivered, or shortly after that or perhaps on appeal, that you may have rushed with your cameras to cover those events, but the public in general would not have been involved in the milieu which you say you can create if you are there from the beginning.

Mr. Haines: But that selection process goes on now.

Mr. Elston: Oh, I understand that.

Mr. Henry: It is not a perfect process. We have to do the best we can and get you as much information as we possibly can, but obviously information slips through and we cannot get you everything.

Mr. Elston: However, what you are saying, basically, is you have a better ability, if you are able to go in whenever you want, to alleviate or redress the sense of injustice that the public perceives.

Mr. Henry: To tell the story to the public.

Mr. Haines: Given the guidelines we suggested, yes.

Mr. C. Stevenson: If I could just suggest, even at the risk of offending sketch artists whose output is what we have now in terms of what we can see of a proceeding, as a consumer of a newspaper or a television story that carries the sketch there are times I have been forced to think of the word "sinister" in looking at some sketches. Some strange things come to mind when I look at a sketch and make an interpretation of what it means or at least what it conveys to me. Think about what I have said the next time you see a sketch about a trial where you are not present to know firsthand what was happening, whether it is the witness, the crown or whatever. There are times when I have used that word, even in discussions about these matters with people, and said, "You know, he looked pretty guilty to me."

Mr. Haines: At the moment there is no way to convey in the media the demeanour of the witness. There is no way to do that now. That can mean a great deal in terms of the believability of someone's testimony.

Mr. Elston: Have you any feedback--I keep thinking of Florida which I think has probably had the widest experience, at least that I have seen, in trials being on air--have you had any feedback in terms of how they have dealt with the selectivity

question or what reaction they have had on moving in and out of trials?

Mr. Henry: Let me just tell you that when we began considering this issue three years ago we wanted to know what the US experience was. We phoned a number of news directors in Florida and asked them what was happening. Was there any difficulty? Did they get any complaints? They could not believe we were calling them because to them at that point it was such a routine matter; it was just electronic media getting the news to tell the people. It is not a big deal after it has been there for a while. People forget it. It is an issue until it is in. In Florida it is a regular thing.

Mr. Elston: Have you had any reaction from any other members of the media to your proposal to televise? You have cited judges and these others.

Mr. Breithaupt: And the sketch artists' union.

Mr. Haines: The sketch artists are nervous, but we are here representing the Radio Television News Directors Association, which is made up of radio and television news directors from coast to coast.

Mr. C. Stevenson: When you read our guidelines you will find, because we deal with the reality of what could happen, and because of that, or for one reason or another--for good reasons I hope--we included in our guidelines a section covering conduct, as well as technical guides, in which there are provisions for still camera photography.

We have put down some very specific guidelines, but I have not had any people from the newspaper business knocking my door down about asking how they could get in. In fact, there were still photographers at the Grange royal commission during the opening days, as I recall, in courtroom 20.

Of course, we realize there is a certain impact, particularly with still cameras, and I wonder about that, given the effect it can have. We have been through all of that. We have checked that out in the United States again. That Florida experience, by the way, is an excellent one. You should read the references to that; it is old hat down there.

4:10 p.m.

Mr. Breithaupt: Mr. Chairman, I just wanted to take a moment to thank the persons who have put together this particular presentation. In the opposition caucus we have had the opportunity on two occasions to have a film presentation outlining some of the historic development and some of the Florida and other American experiences with commentaries from persons who have been involved.

Certainly, I too was rather leery of this whole idea when it was first brought forward, considering the prospect of general disruption in the courts due to the lights, the demeanour of the

witness and the stage role-playing that might occur. But having seen the variety of programs that have been prepared and knowing now somewhat more of the approach to be taken with guidelines, the style of cameras and the lighting matters, which apparently are all easily controllable, I certainly feel this kind of approach being suggested is the way the future will develop.

I was somewhat concerned with the rather terse commentary in the media resulting from the decision made by the judicial council, apparently without at least giving the opportunity to those persons we have had the opportunity of seeing to provide any material. I hope the committee will seriously consider what has been put before it. I must say I agree with the approach this group has taken. If it is necessary to consider withholding proclamation of one section for a period of time to see how it might work out, that is certainly an alternative worthy of consideration.

I appreciate the material you have given us and I want you to know you have convinced me this kind of an approach will be helpful and in the best interests of the public we are all supposed to be serving.

Mr. Chairman: Thank you, Mr. Breithaupt. I believe the Attorney General is next. I would ask you to remember we have two more witnesses appearing before this committee. The floor is yours.

Hon. Mr. McMurtry: I have already made some of the comments I wanted to make and I do not want to repeat them. I have already complimented the association for its very articulate brief and for the films that were shown.

Although committee members have a copy of Bora Laskin's letter, I would like to read it for the record. It was sent to every provincial attorney general and, I assume, to the federal Minister of Justice. The letter is addressed to me and dated November 3, 1983: It says:

"Dear Mr. Attorney:

"The Canadian Judicial Council has given long consideration to the possibility of televising judicial proceedings. It has studied the matter in depth over the past few years and came to the conclusion, at its recent meeting in Newfoundland, that television should not be allowed in court proceedings.

"I have been asked on behalf of the Canadian Judicial Council to advise you of our position as a result of our deliberations."

It is a very emphatic letter, emphasizing the long consideration and the in-depth study.

I think it is important that members of the committee know the Canadian Judicial Council is made up of all the provincial chief justices, associate chief justices, chief justices of the high courts or superior courts of the provinces and any associate

chief justices of those courts. It is a very prestigious body whose moral influence is very significant.

It is important that committee members should appreciate the dilemma this very precise communication creates for all provincial attorneys general. It is also important that members of the committee appreciate another point. While the openness of our courts certainly is a very important principle--one would not quarrel with any of the statements of principle enunciated in that respect by Mr. Henry and his colleagues--an equally important principle of the administration of justice is the tradition that judges have control over the process in so far as proceedings in their own courtrooms are concerned. This, of course, is a foundation stone of judicial independence and is of fundamental importance to the function of the administration of justice.

What we are presented with here is a very strong difference of opinion between the senior judiciary of this country, on the one hand, and radio and television broadcasters, on the other hand, all of whom, I am sure, are working very hard on a day-to-day basis to serve the public interest in the best manner they see fit and are committed to the public service in this respect.

This is a matter of some controversy. It is interesting to note--and I would be unrealistic or a little naive not to think that there was perhaps a modest amount of competition between the print media and the electronic media--but only as an illustration of the controversy, that every editorial I have found, which has been published on this subject across Canada, has been strongly opposed to television in the courtrooms. I will not bother quoting from any of these editorials, which are very emphatic.

I do appreciate that there is a modest amount of competition between these media, but it is illustrative of the nature of the controversy in which we are involved. I am also curious because I am, like all of us here--obviously, it is a trite statement to say we live in the age of television and we all are influenced, to a great extent, by what we see on television. I must admit I am always interested in the opinions that are expressed on television, in particular on those subjects with which I may have some degree of responsibility.

I cannot prove this but one of our prominent lawyers who, in my experience, is seen more often on television than any other lawyer in the country is Mr. Edward Greenspan, QC, to whom the networks often turn when they want an expert expression of opinion in a legal matter.

Mr. Laughren: After they have been to you.

Hon. Mr. McMurtry: I am curious that the very articulate opposition of Mr. Greenspan, being a favourite of the radio and television networks, to the presence of television in the courtroom has not been referred to.

Interjection: His rating just slipped.

Hon. Mr. McMurtry: I am referring, for example, to the minutes of the 30th meeting of the Bench and Bar Council, held on Wednesday, November 30, 1983. The minutes were sent to me by the office of the chief justice. Mr. Greenspan is a member of the Bench and Bar Council. He states that the conclusion reached by the Canadian Judicial Council was the same conclusion reached by the Criminal Lawyers Association, the majority of whose members were opposed to television access to the courtroom.

4:20 p.m.

I do not think anybody would suggest that the Criminal Lawyers Association in Ontario is opposed to the principle of public access to the courtrooms. But this is the opinion of one of its very prominent members. I say that not to be provocative, because I think you do know that we, as a ministry, have co-operated in every way we can under the existing law, in relation to some of the very worthwhile educational projects that are related to television in the courtrooms, to which I referred earlier. But I simply refer to it as another illustration of the degree of controversy, whether we believe it is justified or not, that has been attracted by this issue. Therefore, I think you can understand why we, at this point, have preferred in the Courts of Justice Act, which I am sure will be amended many times in ensuing years, given particularly the strong expression of opinion of the Canadian Judicial Council, we have preferred the route of maintaining the status quo.

As was mentioned earlier by Mr. Henry, even our existing law appears to offend the ruling of the Canadian Judicial Council, which states that television should not be allowed in court proceedings. We feel we have some moral obligation, at the very least, to be guided by the Canadian Judicial Council with respect to proceedings in the courtrooms of this country. Whether or not to allow television in the courtroom for important educational projects offends the spirit of this ruling, it would appear to offend the letter of it. It is something that will undoubtedly be debated in this committee before we deal with the bill clause by clause in early March.

At the present time I am not inclined to support the idea that we cancel any arrangements which have been made, nor am I inclined to believe that television in the courtroom for these programs which are of undoubted educational importance should not be permitted. This is something I am sure the committee members will want to discuss.

I say, with respect, there is still some missionary work to be done at the very least. I congratulate you for the effectiveness of what you have accomplished in making the profession, the judiciary and the public aware of what you are seeking to obtain. There is not doubt your goals have a considerable degree of support in the public, in the profession and, I think, within the ranks of the judiciary as well.

There were one or two questions I wanted to ask you. We have a number of distinguished representatives here this afternoon from

the Canadian Bar Association, the Ontario branch thereof. Has there been any formal approach to the Canadian Bar Association--I assume there has been--with respect to this matter?

Mr. Henry: I was able to address the council of the Ontario branch of the Canadian Bar Association a short while ago. That presentation has been made. Perhaps the Canadian Bar Association members should speak for themselves. I understand the questionnaires which were distributed and were circulating for a couple of months were filled out by certain sections of the Canadian Bar Association. I believe the results have been mixed, but I have not been presented with any results.

Hon. Mr. McMurtry: Ms. Lorraine Gotlib, the president of the Ontario branch of the Canadian Bar Association, is here and I am sure is interested in some of these discussions. The committee will be deliberating a very interesting presentation, but it seems to me we should also strive, if possible, for some degree of uniformity across the country because this is a very important issue.

I would suggest, with respect, that perhaps amongst the other groups the Canadian Bar Association also be asked to take a formal position on this matter. That, of course, is up to you. Any number of us, I suppose, can make that request.

I also want to make it clear that in this province, as you know--I should say with the Courts of Justice Act generally--there has been intensive consultation with the members of the profession and with the judiciary. An important segment of these bodies is represented on the Chief Justice's Bench and Bar Council which meets on a regular basis. I should advise the members of the committee as well that I have an obligation to that committee not to introduce any changes to the existing law without allowing them to make their own recommendations. This is a reality and I think you can understand that.

As the Chief Justice of Ontario has been quoted, "This is an issue that is obviously not going to die," to quote Mr. Justice Howland, "notwithstanding the pronouncement of the Canadian Judicial Council," of which he is a senior member, and this very important debate will have to continue.

There is a reference to the Constitution. The Charter of Rights is there and is available in relation to any challenges that might be made to the existing law, whether it be in this province or any other province.

We are dealing with an issue that still requires some further deliberation, and I do not think the extent of the deliberation that is required is going to be adequately accomplished before our Courts of Justice Act passes. Again, this is an issue that will continue to be addressed. I do not think I can say any more at this time. I certainly look forward to the vigorous discussion that I am sure you gentlemen will have stimulated within the committee before we get to the clause-by-clause discussion in March. I would like to thank you for the very interesting presentation you have made.

Mr. Henry: May I just respond to a few of the points the Attorney General has made? I will be very brief because I know time is a factor.

In view of the fact that this is perhaps a subject that should be considered further, I do not think that justifies passing a law which is clearly unconstitutional.

Hon. Mr. McMurtry: I think you are getting close to misrepresenting what is happening here. We are maintaining the status quo. If you want to challenge the status quo, about which some of us may disagree in relation to its constitutionality, I might say that I have some real personal difficulty with your view of the Constitution in that regard, but I just do not want you to leave the impression that we are changing the law. We are maintaining the status quo in so far as that is concerned.

Mr. Henry: First, the law is not quite maintaining the status quo because for the first time audio recordings have been added to the law as a prohibition. That is perhaps a minor matter. In terms of the constitutionality, I would invite you to consider, just as an example, what possible justification there can be for restricting the photography and the televising of the judgement of a judge. What possible justification could there be? That is prohibited by this section. If that is not unconstitutional, then our Constitution does not mean very much at all.

Hon. Mr. McMurtry: You are, in effect, saying to the Chief Justice and the Canadian Judicial Council that they are acting in an unconstitutional manner. I am sure they would be very interested in hearing your arguments.

Mr. Henry: Not at all. I am saying that they have passed a resolution which is an expression of their views. They are not acting in an unconstitutional manner at all. They have not been asked in the courts.

Hon. Mr. McMurtry: But that is what you are accusing them of.

Mr. Henry: No, not at all.

Mr. Renwick: With great respect to both the protagonists, it is a dead end.

Hon. Mr. McMurtry: We are not protagonists. We are just having an interesting discussion.

Mr. Chairman: Mr. Renwick, you had something to add?

Mr. Renwick: I had two questions to ask the Attorney General on this matter. Is it conceivably possible that we could ever see the report of the Canadian Judicial Council?

Hon. Mr. McMurtry: You have a copy of the report in front of you--the letter.

Mr. Renwick: The judicial council report?

Hon. Mr. McMurtry: Yes.

Mr. Renwick: Oh, I did not see it. Sorry. Did I just get it this afternoon?

Hon. Mr. McMurtry: Yes.

Mr. Renwick: Thank you.

Hon. Mr. McMurtry: It is a very brief, one-page report.

4:30 p.m.

Mr. Renwick: Just a moment. I have read the letter. They said they had studied this matter for some considerable length. Is there any particular--

Hon. Mr. McMurtry: They do not refer to a report. They said the council has studied the matter in depth over the past few years and came to the conclusion. There is no suggestion of a written report or written reasons.

Mr. C. Stevenson: I am sure they have studied the matter over a number of years, but I am not aware of any dialogue with the Radio Television News Directors Association of Canada or of other broadcasters in a formal way, certainly not with RTNDA, but we do not represent all radio and television.

Mr. Renwick: I can recognize that. I would be very surprised if the judicial council met without having something in front of it.

Mr. C. Stevenson: They had our brief.

Hon. Mr. McMurtry: In answer to your question, Mr. Renwick, in his Bench and Bar minutes, page 14, the following statement appears: "Associate Chief Justice MacKinnon, who had been chairman of the committee of the Canadian Judicial Council, stated that the committee studied the matter at some length and made its recommendation unanimously. The committee comprised chief justices from across the country and its recommendation is accepted by the Canadian Judicial Council." That is the only information I have apart from the letter I distributed.

Mr. Renwick: All right, I will move on.

A method you have used on a number of occasions when there is some real problem you had to deal with was to develop a project and use it on a limited scale in a particular area of the province to study objectively the results of that question.

I wonder whether there would be any possibility for the ministry, in consultation with the industry and others deeply concerned about this, to develop a project in an area of the province where courts are sitting where at least some of the vexed

problems could be raised. I was thinking, for example, of the provincial courts, civil division, where there are matters of day-to-day interest, concerns of normal commercial disputes where the same tensions and problems are not involved as they are in other areas, to begin to get some assessment of what the impact would be.

The reservations I expressed earlier would lead me to believe there has to be some movement in assessing some of these basic questions. I do not think we could move at any time unless we moved on evidence or reports from our own jurisdiction.

Hon. Mr. McMurtry: Obviously, the dialogue is going to continue. Perhaps Mr. Henry can enlighten us further as to the nature of what appears to me to be a very ambitious undertaking by the Canadian Broadcasting Corp. to do a series of trials, perhaps featuring certain lawyers--I do not recall all the details--which will permit television cameras in to film actual trials. This seems to be a major undertaking and will represent, apart from anything else that might be done, another important opportunity for the public and the profession to assess the whole issue.

With respect to a pilot project, it would require special legislation or an amendment to this legislation. In discussions with some of my attorney general colleagues across the country, they are in agreement with me that if one is going to respect the judicial institutions of our country, one should not lightly reject a conclusion of such a respected body as the Canadian Judicial Council in a matter that really deals with what goes on in a courtroom, given the traditional responsibility the judges have always had to "control the process" in their own courtroom.

I am always very interested in any comments you have to make, Mr. Renwick. This is something we can certainly discuss before this legislation leaves this committee.

Mr. Chairman: Mr. Henry, Mr. Stevenson, Mr. Haines, on behalf of the committee, thank you very much for appearing with us here this afternoon.

Mr. Mitchell: I think we might give them a couple of minutes so that they can get their equipment away. I presume they will want to do that so that the next group appearing would not--

Mr. Chairman: We have one gentleman next. Good afternoon, sir. Thank you for being so patient with us. We seem to be running a little late. We would appreciate if you would highlight your brief as much as possible.

THARWAT N. YOUSSEF

Mr. Youssef: Mr. Chairman, I intend to follow my brief as outlined in my written submission, where I comment on various sections of the bill in the same order as they appear in the bill.

First, I cannot miss the opportunity to comment that Bill 100 appeared to me to contain many improvements over the various

existing statutes. Nevertheless, there appeared to me to be some room for improvement.

Section 134 of the bill relates to Sunday. It basically preserves the provisions that we have today and have had for many years that prohibits service of court documents, papers and what have you on Sunday. The language used in section 134 is a little more permissive than what exists today--that is not necessarily bad--and it does provide for exceptions to be made to service of these papers or execution of court orders on Sunday if the court grants such an exception, presumably under specific circumstances of an individual case.

Since that saving provision is provided for, it would seem to follow that perhaps now is the time to recognize that the weekend for most people is not just one day, as it used to be in the old days, it is actually two days. The prohibition of service of documents and execution of orders should not be limited to Sunday only, it should also extend to the whole weekend, namely, Saturday and Sunday.

4:40 p.m.

Along the same line, it should also prohibit doing this at unreasonable hours. Unreasonable hours seem to be between sundown and sunrise. If there is a specific reason why that should be deviated from, one would be able to go to court and convince the court that an exception should be made, and provision for an exception is already stated in that particular section. If there are no specific, compelling reasons, there is no need to bother anyone with court papers or the execution of a court document on the weekends or at an unreasonable hour. It does not reflect favourably on the court, the court system or the authorities in general when these things are done on the weekend or at night when there is no necessity for them. It is simply distasteful without any particular reason for doing that during those hours.

The next point relates to a discrepancy that has existed all along and which seems to be perpetuated in Bill 100. That is the discrepancy between what is now subsection 141(2) of Bill 100 and section 37 of the Solicitors Act.

Very briefly, it relates to court costs when the crown is a party. In practice, it applies when the government of Ontario gets into a dispute over the building of a bridge or a hospital or the procuring of supplies for the government and ends up being a litigant in court.

Section 37 applies to a corporation. Basically, it provides that a corporation litigating through one of its employee solicitors would not be able to obtain compensation for the work its own employee did since he has to be paid anyway. However, the section in Bill 100 says that when the crown does the same, when it litigates by one of its employees solicitors, it will be able to recover some money in compensation for the work one of its own employees did.

I should emphasize that has always existed and it has been carried on in Bill 100. I would like to submit that is no longer maintainable. It creates one instance where the crown or the government of Ontario would receive favourable treatment when it becomes a litigant in the court as opposed to others, namely, large corporations, which also have employee solicitors. That anomaly should be resolved either by changing the Solicitors Act and allowing corporations which litigate by employee solicitors to recover court costs or, alternatively and, I submit, preferably, by preventing the crown from obtaining compensation for anything one of its employee solicitors does in the court when the crown becomes a party.

In other words, my main concern is that there should be no favouritism shown towards the crown when it appears before the court as a litigant. There is no suggestion that the court will favour the crown or the government of Ontario. However, when it comes to the taxation of costs, the present statute, preserved in Bill 100, preserves that disparity and, I submit, it should be eliminated. There seems to be a very apparent wisdom in section 37 to prevent a corporation, acting through employee solicitors, from obtaining compensation for the work of their employees. There seems to me to be no reason that the same should not apply to the crown or, to be more practical, to the government of Ontario.

The next point relates to sections 177 and 210 of Bill 100. Basically, they remove certain provisions that are currently contained in sections 4 to 6 of the present Replevin Act. Those provisions that exist today, and that most likely are followed by every sheriff in Ontario, are that when the sheriff is acting under what is known as a writ of delivery, namely, acting on an order from the court, to bring a certain object of some value from someone to someone else, the sheriff first has to demand some co-operation. He has to explain his presence, and if there is no co-operation, then he can proceed to use some kind of force.

The second provision is that the sheriff may never enter any dwelling during the night-time. These provisions do not reappear in Bill 100. Bill 100 repeals and cancels completely the Replevin Act. I think that is unfortunate. It may very well have been an oversight; I am not sure.

Some commentaries were published with Bill 100 which refer to a law commission study that presumably resulted in that change. I have read that law commission report. In guiding the sheriff, it recommends he acts uniformly under a writ of execution or a writ of delivery or a writ of sequestration. This uniformity has been followed in the act. It does not say anything to eliminate the present requirement for the sheriff first to attempt to obtain co-operation by peaceful means; neither does it say anything about the question of the sheriff entering a dwelling during the night.

It seems to me these two provisions should be preserved. I submit it is disgraceful for any sheriff, or any employee of the sheriff, to apply force without first attempting to obtain peaceful co-operation. Similarly, I think it would be disgraceful for him to attempt to disrupt anyone in the middle of the night for any reason. He is, after all, an agent of the Queen and a representative of the authorities of Ontario.

What we are dealing with here is the matter of a sheriff assisting someone by obtaining a sum of money or an object; it is not for any other higher purpose. It would be indecent for the sheriff to do any of these things. He does not do this now. The law reform commission that studied this question clearly indicates that the sheriff today does not do any of these bad things.

I submit this is perhaps because the sheriff knows of the existence of these sections in the Replevin Act, yet this bill would seem to eliminate them. I submit that if this limitation or prohibition upon the sheriff is removed by today's legislation it will be interpreted as encouragement to be to be less respectful of people--to be more rude, more nasty and undesirable. That may not have been its intent, but that is a possible and likely result.

One should also remember the sheriff usually carries out detailed instructions from a solicitor for a bank, a trust company or someone who is entitled to the money. Thus it is conceivable that someone, for one reason or another, might persuade the sheriff he need not talk to a person--that he can just break his door down and grab whatever it is he is supposed to have.

Such a course of action is not necessary nor desirable. It is not what the average man on the street expects the authorities to do even if the court directs that a certain object has to be delivered. Peaceful co-operation should be demanded first; force should be applied second, if necessary; and no one's dwelling should be violated during the night.

4:50 p.m.

The next point concerns section 214 where there is a certain amendment to the Solicitors Act. It would allow a solicitor to obtain what is referred to as a charging order whereby the client's property right to the fruits of litigation be declared those of the solicitor. It seems to me no one's property right should be lightly interfered with. Also, the amount the solicitor is claiming should be not in dispute before there is such an interference in the client's property rights.

Unless dire things should happen before such a declaration is made, maybe the solicitor's bill can be assessed by the court, or the client can give a written form of consent that he agrees with the solicitor's charges or, alternatively, the solicitor's bill is so obviously reasonable that the court is satisfied it is not likely to be reduced. One can only lament any erosion of property rights and such erosion should not be encouraged or lightly take place.

The final point is that there are several changes to the Solicitors Act contained in Bill 100. It may be desirable at this time to make one additional change that resolves an existing problem, that is, when the client is concerned about the amount his lawyer has charged him, he can obtain the assistance of the court in assessing the amount the solicitor is charging him provided he does so within one month from delivery of the solicitor's bill. If the bill is more than one year old, he will

have to convince the court why he did not act quickly. But there is nothing in the Solicitors Act that says what is supposed to happen when the bill is more than one month old but less than one year old.

I realize that the scheme of the act is to prevent multiple assessments of the solicitor's bill. The solicitor is prohibited from suing his client for one month and within that one month the client can obtain that assessment. It seems to me that the word "month" should be extended if there is a simple affidavit from the client saying: "The bill is more than one month. The solicitor has not taken any steps to sue me or to tax the bill. I would like the court to assess it." I think that would be a simple solution that would tend to reduce disputes between clients and solicitors.

On that last point, today a solicitor has a lien on his client's papers. That lien seems to be a relic from days gone by. Whenever it is used it is used because the client is not aware of its existence and, by the light of nature, no one would imagine that the lien a car mechanic has on a car that he worked on would exist, or a solicitor's lien on the papers that wholly belong to the client. Perhaps the time has come to abolish that relic from the past. Thank you, gentlemen.

Mr. Chairman: Thank you, sir. Are there any questions of the witness? If there are none, perhaps the Attorney General would care to make a few comments.

Hon. Mr. McMurtry: Very briefly, because of the lateness of the hour, Mr. Youssef, I was very impressed by the care and attention you have taken to submit this very interesting critique of the legislation. I congratulate you for it. You do not describe yourself as a lawyer, rather as an engineer, but you obviously have some impressive legal skills in your array of talents.

There are a number of these issues that are very relevant to our review of the Solicitors Act, which is one of our priorities in relation to the Ontario Law Reform Commission report, which you are familiar with and which was published some time ago. What I would like to do is respond in detail to your submission within the next few days and supply copies of my response to members of the committee. Given the time that is available now, a very brief response would probably not do justice to the work that has gone into this. I would like to send you a detailed response and supplies copies of that to the committee and thank you, as I say, for your interest in this very important legislation.

Mr. Chairman: Thank you, Minister, and, sir, on behalf of the committee, we thank you for appearing this afternoon.

Mr. Youssef: Thank you for having me.

CANADIAN BAR ASSOCIATION

Mr. Chairman: The next witnesses are from the Canadian Bar Association. They are Lorraine Gotlib, QC, president; Robert E. Milnes, chairman, business law section; Michael Robinson, QC,

member, business law section; Professor J. G. Castel, Osgoode Hall Law School; David G. Stinson, chairman, civil litigation section.

Mr. Breithaupt: I think the introduction has just used up all the time.

Mr. Renwick: Have we received this brief?

Mr. Chairman: I think the clerk is bringing it out now.

Mr. Renwick: Why are the numbers of these exhibits that we just received--do they have numbers yet?

Mr. Chairman: That was exhibit 13 for Mr. Youssef.

Mr. Renwick: And the voluminous one from the media people?

Mr. Chairman: I do not know whether there was a number on that one, I am sorry to say.

Mr. Renwick: I do not think there was. I had Mr. Youssef's.

Interjections.

Mr. Chairman: You may proceed at your convenience, Ms. Gotlib. You may introduce your delegation.

Ms. Gotlib: I think we are ready, Mr. Chairman.

I will not reintroduce myself. With me today on my right is David Stinson. He is chairman of the civil litigation section of the Canadian Bar Association-Ontario. Robert E. Milnes on the far right is chairman of the business law section of the Canadian Bar Association-Ontario. Both gentlemen are practising lawyers.

Also present, I have on my left Dr. John Castel, a law teacher, jurist, writer and editor, and J. Michael Robinson is a practising lawyer. Both will assist the committee in the presentation of the submission being made on behalf of the business law section. We have two matters. We will try to keep them separate.

First, I would like to deal with the submission of the civil litigation section, a copy of which is before you in the form of--I believe the letter was undated, addressed to Mr. Arnott and dealing with sections 127 and 139(4).

As you are aware, the Canadian Bar Association-Ontario's procedure would involve approval by the executive of the civil litigation section, then discussion at a meeting and a vote by that membership, then the executive of the Canadian Bar Association-Ontario and then the council of CBAO.

In view of the shortness of time and rather than do away with any support for the civil litigation executive, we think it

proceeded properly and the CBAO executive committee has supported the civil litigation executive proceeding. That submission was approved by the executive committee of CBAO yesterday, January 25, and we are therefore here before you to present to you the submission as a submission of CBAO.

I now call on David Stinson, representing 1,900 members of the civil litigation section, to deal with the substance of the submission.

Mr. Stinson: Mr. Chairman, the provisions provided in the Courts of Justice Act as far as they affect civil litigators will dovetail with the provisions of the new rules of practice which have been the subject of the work of the Morden committee over the last three years.

5 p.m.

In large measure, the significant changes that are to be made in terms of practice are going to have to stand the test of evaluation once the new rules are published. They are at present, of course, unpublished. I understand they have undergone extensive revisions from the rules which were proposed by the Williston committee in 1980. However, at present there are two specific provisions in Bill 100 which I would like to address and which merit specific comment at this time.

First is the provision found in section 127 which proposes to alter the present law in relation to the claims which can be made for contracts of indemnity, or indeed insurance policies, which contain provisions that now prevent claims being made against insurers where a defendant in a lawsuit has yet to suffer judgement. In other words, an action may be brought against a defendant who has insurance.

The lawsuit may involve a claim which the defendant would like to have covered by his insurance, but the insurer may deny coverage. At present, the no-action provision in the insurance policy will be effective to prevent the defendant from claiming coverage under the insurance policy or proceeding to claim indemnity against his insurer until he goes to the extent in the first lawsuit of suffering judgement. Such no-action clause leads inevitably to duplicitous litigation because a second lawsuit becomes necessary where the defendant who has suffered judgement must proceed against his insurer. This is quite contrary to the spirit of Bill 100, as set out in section 148, to eliminate duplicitous litigation.

Frequently, many of the same issues of fact arise in both the original lawsuit and in the lawsuit against the insurer because the question of coverage may well depend upon the determination of the characterization of liability in the original lawsuit.

This is inconvenient for not just the defendant in the first proceeding but also the plaintiff, for frequently that plaintiff and many of the witnesses may come to be participants in the second lawsuit. That second lawsuit regrettably may involve a

different determination of fact in respect of the very same issues. Thus, the traditional evils of inconsistent findings of two courts, increased costs for the litigants and unnecessary extra work for the courts are present, not to mention the hardship that a defendant must endure where he is the subject of a judgement and has his assets exposed to liability in favour of the plaintiff for an extended period of time while his claim against his insurer finds its way to the court.

One solution which is adopted by some defendants in this dilemma is to serve a notice of appeal which has the effect of staying proceedings under the first judgement and that buys him extra time to proceed with his case against his insurer.

Hon. Mr. McMurtry: I think perhaps we could shortcut this particular concern by stating that we agree. I think we have no disagreement as to what the section is attempting to achieve. We believe that in its present form it does achieve what we together wish it to achieve. We agree with that entirely, but we understand there is some concern among the profession as to whether it does achieve what it was intended to achieve. We have agreed to meet with the Advocates' Society to talk about the drafting and we hope to assure the profession that there is no misunderstanding about that, because we have no quarrel with the goal that you describe.

Mr. Stinson: I am obliged for that.

Hon. Mr. McMurtry: We will be meeting with the Advocates' Society. We will alert you and we can get everybody together and resolve any drafting issues that might be outstanding. In other words, you do not have to make the case any more than you have.

Mr. Stinson: Thank you. I want to make it plain, however, that we do support that modification to existing law. I have a proposed revision which I could direct to Mr. Perkins for purposes of that discussion. I will do that in due course.

The other provision I would like to address does involve a change to the apparent policy which is contained in Bill 100 as it is drafted at present. This relates to subsection 139(4), which is a provision dealing with post-judgement interest on costs. It seems to be an alteration of the present law, which is found in rule 548(2) of the current rules of practice. At present, where a party is awarded costs, he is entitled to be paid interest on those costs, which interest accrues from the date of the judgement awarding them. However, under subsection 139(4) it appears that interest will accrue on those costs only from the date they are ultimately assessed.

Our current rule appears to resolve any possible inequity which may arise due to a delay in proceeding with a taxation or assessment in that the costs will bear interest and interest will accrue on the sum ultimately assessed from the date the liability for costs is determined. At present, taxation appointments may not be obtained for some months after the date of judgement, or more importantly, where an appeal is taken a party may decide to

refrain from proceeding with a taxation to collect the costs awarded by the judgement since it is conceivable that the judgement on the appeal will reverse the order as to costs and of course execution of the original trial judgement is stayed until the disposition of the appeal in any event. Thus there is little point in proceeding for the time being with an assessment of costs.

If the successful party has paid his solicitor's account, he will be out of pocket. If he has not paid his solicitor's account, that account bears interest under the Solicitors Act. Thus a party who does not proceed with a taxation and there are good reasons for not doing so may suffer prejudice. Indeed, it might be a good policy consideration to not force that person to proceed with the taxation when it may turn out to be unnecessary because that would only further clutter up the system.

Thus it is suggested it would be appropriate for the award of costs to carry with it interest from the date of the award in respect of the sum ultimately assessed. It does not appear unfair to require the unsuccessful party to pay interest since it is analogous to the situation involving prejudgement interest on unliquidated claims. That is, once the quantum is finally determined, the calculation of accrued interest is fairly straightforward. The current practice appears to recognize the possible prejudice to successful parties and in our submission ought to be preserved under the Courts of Justice Act.

Hon. Mr. McMurtry: Could I ask a question at this point, for assistance? It seems to me it is an interesting point that you make and one that has been considered; that is, the idea of an unsuccessful litigant who might want to pay the costs immediately after the judgement but cannot pay the costs because they have not been taxed. As you have already pointed out, through the fault of no one, neither the successful nor the unsuccessful litigant, the costs are not taxed for perhaps some months down the road.

I have a little difficulty here. Again you are dealing with competing rights. It is hard to be an absolutist about the idea of backdating the interest, in effect, on an amount that is yet to be determined and an amount that can be determined only as of the date of taxation. Even though the person would have liked to have paid it in order to avoid having to pay that additional interest, he is really precluded from paying it by circumstances beyond his control yet he is still assessed that interest. The concept is an interesting one.

Mr. Stinson: If I may say, I have the perfect analogy. Liability is admitted in a personal injury accident and it is not until the date of the assessment of damages that the defendant knows what he has to pay.

Hon. Mr. McMurtry: Yes, quite right.

Mr. Stinson: Yet he is responsible under present law for paying prejudgement interest from the date he knows he is being sued.

Hon. Mr. McMurtry: I think that is a good analogy.

Mr. Stinson: The situation is an identical one here, in my respectful submission.

Hon. Mr. McMurtry: Our insurance companies friends do not like very much the fact that they are required to pay that interest. I agree with you that the analogy is quite appropriate.

Mr. Stinson: Solicitors, on the other hand, would be in a different position.

Hon. Mr. McMurtry: Yes. Thank you.

5:10 p.m.

Mr. Stinson: Those are my submissions in respect to the change we propose to subsection 139(4). I also have a proposed revision and I would be happy to provide that to Mr. Perkins as well.

Hon. Mr. McMurtry: There is one other issue I think is in support of your argument. The person who is seeking to recover costs is hoping to defray his legal expenses, amounts of money which may already have been paid out in a substantial manner. That is perhaps another argument in support of what you are saying.

Mr. Renwick: Do we have the response to the actual resolution with respect to foreign money obligations?

Ms. Gotlib: With respect, that resolution is the second part of the submission. We have not yet addressed that.

Mr. Renwick: I see. Thank you.

Ms. Gotlib: We now come to the submission of the business law section of the Canadian Bar Association-Ontario. This is one of our larger sections. It has some 2,100 members. The submission originated with Michael Robinson and has in general terms the support of the executive committee of the business law section of our branch.

The submission was dealt with at the executive committee meeting of CBAO yesterday, and you have just received the form of the resolution that was passed by the CBAO executive. You will see that we support the clarification of conversion into Canadian currency of foreign money obligations by legislation. This matter had come forward to the executive of the business law section and the executive committee of the branch on very short notice, but has the necessary internal approvals of the Ontario branch to be a submission of the branch.

We understand fully that the exact language of the legislation and the date of payment of any such obligation are worthy of much further consideration. On the basis that a working committee would actually have to resolve the problem and do the drafting, the CBAO's executive committee passed the resolution you now have.

I would now like to present Mr. Robert Milnes, the chairman

of the business law section, to deal with the introduction to the substance of the proposals. Mr. Robinson and Dr. Castel are here to speak to it as well. Mr. Stinson has a mandate also from the civil litigation section and will speak to that matter as well.

Mr. Milnes: Mr. Chairman, I have some brief preliminary remarks. The business law section of the Canadian Bar Association-Ontario welcomes this opportunity to appear before you while you are considering the provisions of the proposed Courts of Justice Act. In our view, the implementation of this legislation creates an excellent opportunity on the part of the Legislature to clarify the current uncertain state of the law on the conversion of foreign money claims and judgements into Canadian currency.

As you are aware, commercial financing has become increasingly more international in nature and increasingly a wide variety of commercial contracts to which Ontario residents are parties are entered into in currencies other than Canadian currency.

At present, the law of Ontario relating to the time and manner of conversion into Canadian currency of foreign claims and judgements is unsettled. Ontario lawyers trying to advise clients in this area are faced with a confusing series of conflicting English and Canadian judgements, which makes it difficult to advise clients with certainty. In international business and finance, certainty on the part of the parties is of paramount concern. A clarification of the Ontario law in this area at this time, in our view would support the success of Ontario bidders in international contracts.

In respect of the choice of the date for converting foreign money judgements into Canadian currency, we appreciate there may be a difference of opinion among legal practitioners of various branches as to which particular time should be chosen. From a commercial lawyer's point of view, the time of payment may appear to be the most efficacious and this particular time has been supported recently to a greater or lesser extent by reports on the subject issued last year by the Law Reform Commission of British Columbia and the law commission of England.

There are also certain other issues to be considered, such as the rights of parties to contract out of the provisions of the legislation or the provision of an overriding discretionary right on the part of a judge to make a different award in cases of hardship.

However, notwithstanding these particular concerns, we believe they can all be accommodated and, above all, we hope the enactment of the Courts of Justice Act will be used to remove the present uncertainty in this area of the law. Our section would be pleased to work with other appropriate sections of the Canadian Bar Association-Ontario and officials of the Ministry of the Attorney General to settle an appropriate draft amendment in time to be included in the bill before its final enactment.

Attending here with me today are two representatives of our section who have considerable experience and knowledge of the

areas in question: Mr. Michael Robinson, QC, and Professor J. G. Castel, QC, of Osgoode Hall Law School. Both of these gentlemen will be pleased to answer any questions of a specific nature on the current problem of uncertainty and proposals for legislative reform.

The Vice-Chairman: Do you have anything you would like to add to the comments made by Mr. Milnes before I see if there are any questions around the table?

Mr. Robinson: Mr. Chairman, I have a brief comment to make and that is to observe that, as Mr. Perkins is aware, the original proposal as put forward by myself in a personal capacity was to choose a payment date as the appropriate date.

The CBAO, with whose delegation I appear, I do not think has yet had an opportunity to be entirely satisfied in both appropriate sections that this is the date, but I would like to put my personal hat on and say that from the research I have been able to do and during the time in which I have been interested in this problem, since 1975 when the English law began to change, and from having reviewed the recent reports of the United Kingdom law commission and the British Columbia law commission, I think all parties are going to come out on balance as favouring a payment date. I would be happy to answer any questions any of you might have as to why that is appropriate.

I asked Professor Castel if he would assist and become involved on short notice because there was a suggestion that there might be a constitutional problem. Obviously, when one is speaking of constitutional problems and looking to the authorities, one looks to Professor Castel. Since his name was being used as the one who might have raised the problem, it appeared he should be asked to come and deal with it. He kindly agreed to come here on short notice in the event that members of the committee want to consider whether there is such a problem.

The Vice-Chairman: Since the question was raised prior to the two speakers, perhaps the minister might care to respond to the question raised by Mr. Renwick.

Hon. Mr. McMurtry: We have, of course, been debating internally, as everyone has. In this issue the choice of the conversion date is interesting, whether it be the date of the breach, the date of the judgement or the date of the payment.

With some currencies fluctuating fairly dramatically, but being aware of the recommendation of the Law Reform Commission of British Columbia, one would wonder, for example, if it would appear that we are dealing with a currency that is expected to decline in value in relation to the Canadian dollar, to what extent this is going to be encouragement to delay the payment as long as possible.

I suppose we are going to have to face these issues in relation to the other dates, but with the date of the breach at least some argument can be made that date is more or less a date that can be ascertained. Certainly there can be no argument about

the date of the judgement, but the date of payment is something that could be delayed to the detriment of the judgement creditor.

I know this is an issue that you have thought through very carefully. I wonder if you could assist myself and members of the committee in a little more detail as to why you chose that date in preference to the other dates?

5:20 p.m.

Mr. Renwick: Perhaps a specific example would help us.

Mr. Robinson: For one who has difficulty balancing his own bank book, I should speak conceptually first and then try to give the examples. It is a complex subject.

I would not suggest for a moment that picking any date is the perfect answer. Indeed, this whole problem is kind of a self-fulfilling prophecy. Because there are currency fluctuations and one cannot predict what they will be, this leads to the fact that there is a gamble for all parties. One has to choose the date that seems to work the greatest equity. It also should be the date that puts the parties closest to the position they would have been in at the time the commercial contract was breached or the tort was committed that gave rise to the obligation.

None of the writers on the subject has been able to demonstrate that any one date is perfect. However, I am fortunate in the timing in that shortly after making the submission that gave rise to this appearance, the UK report, that is the Miliangos judgement in 1975, came forward. It was a very thorough analysis of the whole subject.

The neatest way to summarize what was said is simply to quote from the conclusion drawn in that voluminous report. In typically well-written, terse English style it is only three lines. "It is our view that the principle which underlines Miliangos and the consequences which flow from it produce a result which both in theory and in practice is greatly to be preferred to that produced by the sterling breach date rule."

The principle underlying Miliangos is simply that the date of conversion should be as close as possible to the payment date so as to eliminate or minimize the number of inequities and inconveniences resulting from currency fluctuations.

It is true that we in Canada are fortunate to have a strong currency. That may not always be true. Indeed, many of the horrible examples arise when great shocks occur and currencies such as the pound sterling, which gave rise to the sterling judgement rule, fall on ill days.

I can deal in detail with specific arguments in favour of breach date, judgement date and payment date, but I do not think I can do better than pointing to the two very thorough reviews that came out very clearly for that date.

Mr. Chairman: Any other questions from any members of

the committee?

Mr. Breithaupt: Mr. Chairman, we do have Professor Castel here.

Hon. Mr. McMurtry: I was going to ask Professor Castel about the constitutional issue in relation to the federal Currency and Exchange Act. Some of my advisers have suggested approaching the federal government with an amendment to that legislation in order to avoid a constitutional challenge to our legislation. This might be done on the basis that it is in constitutional conflict with the federal legislation which does appear to occupy the field in so far as the substantive issue of currency is concerned.

Dr. Castel: Mr. Chairman, with your permission, if I may just backtrack a little bit, I would like to say one thing about the merit of the payment date rule. The Attorney General seemed to think there is an incentive to delay payment. I look at it as a matter of justice in the sense that this way nobody wins and nobody loses. You can delay as much as you want but you are not going to benefit one way or the other. The idea is that you have to be put back to exactly the same position you were in.

I have worked out a little example. Let us say that you owe 10,000 French francs and at the time when these French francs are owed, at the breach date, the rate is 10 to one, so that the debtor would owe \$100 Canadian if we apply the breach date. If in the meantime, until payment of judgement date, the French currency goes down and the Canadian currency goes up, let us say the rate is now 20 to one, the Canadian debtor would owe only \$50. You may say the French creditor is going to lose. No, because with the \$50 he is going to get 1,000 francs, so he is back to exactly where he was. He does not get any more; he does not get any less.

If you apply the breach date, someone is going to make a profit, because you are going to have \$100 and the Frenchman who gets \$100 will be able then to collect twice that amount. When he translates the \$100 under the breach date into French francs at the time when he actually gets the money, he is going to get twice as much.

Mr. Breithaupt: At least the equivalent purchasing power.

Dr. Castel: We have to make a distinction here between inflation and just currency depreciation. If you look at it from the point of view of inflation, of course, it may reflect inflation so you are no better off. With the money you are going to get at the time of payment you can purchase goods that are only equivalent to what was owed in the first place. We are not talking here about inflation, we are talking about depreciation of one of the currencies. Granted it is close to, it is correlated, it is connected with inflation to some extent.

Mr. Laughren: Excuse me. Using your example, if that payment was made immediately before the devaluation, what you are really doing then is making a judgement that the person would benefit or suffer, whatever the case may be. You are saying that is not appropriate.

Dr. Castel: It is not appropriate because you are not going to be paid immediately.

Mr. Laughren: No, but if that person had his own money and it was not being awarded in such a way, that person would either benefit or get hurt without any kind of involvement on the part of--

Dr. Castel: We are working on the principle that payment is not to be made on the breach date. That is why we want to keep it so that nobody wins or loses. They are always going to get back the equivalent of foreign currency that is owed to the creditor.

Hon. Mr. McMurtry: If the French litigant, by reason of the breach, is forced to go out and pay the 10,000 francs because of the breach of the Canadian litigant, he is forced to expend that money by reason of the breach, on the date of payment, because of devaluation, he may get only half back.

Dr. Castel: I was using 10,000 francs, which would be \$1,000. On the breach date, if he is paid on that date, he gets \$1,000, he goes to the bank and he gets his 10,000 francs.

If the debtor delays until judgement is rendered or until the sheriff actually seizes his goods and he is going to pay the 10,000 francs at that stage, if the French franc has gone down and is now worth half of what it was worth before, the Canadian debtor by delaying, I grant you that, will be paying only \$500, but the Frenchman is still going to get his 10,000 francs.

Mr. Laughren: Unless he wants to covert it to Canadian dollars; then he has lost.

Dr. Castel: What you owe is 10,000 French francs, not Canadian dollars.

Mr. Robinson: The theory is that the parties chose a currency other than the currency of Canada for their contracts in most of the commercial law situations. In order to try to allow the parties to continue the theory of their bargain in a foreign currency, you assume that the constant in the process is the litigation. It will happen one way or another. There will be delays, some people may try to delay for advantage and be forced on by good counsel on the other side and vice versa. Surely this is a tactic with which my civil litigation section leader partner will agree. It applies in all sorts of litigation not just in currency litigation. That is a constant.

5:30 p.m.

The fluctuation is the currency exchange, which is beyond anybody's control. Whatever one picks, it is a gamble. If one assumes that certainty is better than confusion in the state of the law, and that seems to be agreed by everybody, then it is a question of picking the date which seems to be the closest to putting the parties in equity where they thought they were going to be.

Our submission is that if one follows it through logically, again supported by the very thorough research done by these two other commissions, on all balance of convenience and equity the payment date rule is the closest.

One the reasons why it lacked support heretofore was that the mechanical inconveniences of doing it, of actually making the exchange, being able to certify to the sheriff, for example, in connection with executions what the appropriate conversion rate is, how to deal with prejudgement interest, these concerns which arose in 1975 have mainly been dealt with by the development of the English practice. In England, as commented on in the UK report of October 1983, these ghosts of terribly significant practical problems have evaporated. There are practise directions in the UK which work.

As was observed in the BC report, it seems not to be an insurmountable problem to link prejudgement and even post-judgement interest to an interest rate for a particular foreign currency up to the time of conversion and then convert very simply with a \$4.98 calculator that everybody has.

Although there is no perfect date, it certainly appears that everybody in this room, and we submit the government, would not be running any significant risk or taking any big gambles or changing the law violently to do this.

The advantage that occurred to us is the review that is inherent in the Courts of Justice Act and the opportunity for Ontario to be a leader in this area. It certainly is true from my practice, now almost 18 years at the bar, that the growth in international trade and finance from Ontario abroad, in our manufacturers, in our financial service institutions including our banks, has been almost exponential and we can expect it to continue and we would hope it will continue.

I believe it would greatly assist Ontario residents in dealing abroad, in doing everything from selling our streetcars to Singapore to our banks being leading international banks, for this uncertainty to be clarified and for the date for conversion that we pick to be that which is consistent with the leading financial jurisdiction in the world, which certainly is the UK, which has the payment date.

Mr. Renwick: Have they put that into effect in England?

Mr. Robinson: Mr. Renwick, they did not need to, by legislative change. Lord Denning did it for them with the Miliangos case. It was changed by case law, followed up by practice directions of the Court of Queen's Bench as to how to implement the rule for conversion.

There certainly are differences between the Canadian and the UK situation because the UK is a member of the common market, it is a unitary state and there is not the problem of the Currency and Exchange Act which we have in Canada, which says that statements of courts and in court shall be in Canadian currency. In the UK they use an alternative form of judgement; i.e., the

losing party shall pay X French francs or the sterling equivalent thereof. It is his choice.

We do not recommend that because it seems to fly in the face of the Currency and Exchange Act. We would recommend simply to have the amendment to the act state that a conversion into Canadian currency shall be done on the following basis. This seems to us to be entirely consistent with the administration of justice in the province and in no way in conflict with the provisions of the federal act which is still on the books, however old and hoary and inappropriate.

I think Professor Castel supports me in that latter comment.

Dr. Castel: That is what I wanted to say in answer to the Attorney General's point. I agree. In the book I wrote some years ago, I mentioned that section 11 stood in the way of the adoption of the payment date rule. This was based on case law that was decided at that time. Some judges felt they were bound by this section and could not give a judgement in foreign currency.

Since then, some judges have departed from that point of view. If you look at it from the constitutional angle you will find, as Mr. Robinson was saying, that property and civil rights within the province, the administration of justice within the province, procedure in civil matters and so on, as we know, are within the jurisdiction of the provinces.

On the other hand we have the legal tender, the currency, the paper money, which is within the province of the federal government. So the question is really, where does this rule fall? Does it fall within federal or provincial jurisdiction?

If we look at the pith and substance of this proposal we are making, we can see we are really connected with the administration of justice. We could approach it two ways. We could say, let us disregard the federal act or ask for legislative change by the federal Parliament.

I think our proposal is a better one because it avoids section 11. They have precedent for this Ontario legislation in the field of the reciprocal enforcement of foreign judgements and in the reciprocal enforcement of maintenance orders. It contains provision dealing with currency and exchange. We have done it there and nobody seems to have objected to it. There was Mr. Justice Rand involving the constitutionality of the maintenance orders act. There is nothing wrong with it. I do not think we would be infringing any federal legislation.

Somewhere in the British Columbia report they addressed that question and came to the conclusion that section 11 and the Currency and Exchange Act was designed to uniformize the currency in Canada and had nothing to do with court proceedings, because at that time there were all kinds of currencies being used in Canada. Therefore, when section 11 speaks of judgements it really infringes provincial jurisdiction and, in fact, section 11 is ultra vires.

I do not think we have to get involved in this particular problem because the way our proposal is worded we bypass the constitutional issue. If we say the debtor has to pay the Canadian equivalent of 10,000 French francs as of the date of payment as ascertained, or whatever formula we want to use, we are really not infringing section 11 if section 11 is intra vires, although the British Columbia report indicates it might be questionable.

Mr. Renwick: Help me a little bit. It seems there is something inequitable about that flat rule. Take the French creditor, an example you gave. Surely the guiding date in any ordinary business commercial transaction would be the date of contemplation of the parties when payment would have to be made. In a commercial transaction, ordinary prudence would say you would buy forward in French francs for the purpose of being able to satisfy your obligation at that date.

I am out of touch so I am not with it, but it would seem to me that one of the first possible dates in accordance with good commercial practice, so that nobody is taking a view of the exchange market, would be what a prudent person would do having entered into that contract, which would be to buy forward in French francs and have it available on the date of payment.

5:40 p.m.

If you cannot pay on that date and there is a breach one way or another, it seems to me that before that date in contemplation of the parties for payment is discarded in favour of another date, at least that matter could be spoken to or argued. If no date is in contemplation of the party, because there may be situations in which there is no specific date in contemplation of the party, then presumably the court would have to direct its attention to some other solution for that problem. But it does seem to me that you let the Canadian debtor, or in the reverse situation you let the foreign debtor, start to play with the currency market without taking the ordinary commercial protection which was afforded to him. Am I away off base, or not?

Mr. Robinson: No. I do not think you are at all. It is a very cogent observation and it has been made before. But the weakness of it is that it assumes we have not had a breach.

I will give you a classic situation which even somebody who cannot add, such as me, can do. We have a simple bank loan, for example, which is payable in a foreign currency and the expectation of the parties is that it will be paid on the due date. When it is not paid, applying your hypothetical situation, it is not because the debtor did not have the money and therefore bought forward the United States dollars, he did not intend to pay, because he is in breach of his obligation. So you are chasing him for the money. The problem is if you intended to get US\$1,000, why should you run the risk of the US dollar falling out of bed between the time of your reasonable expectation of receiving that money, namely, the breach date, and the time you collect it?

Mr. Renwick: Or vice versa.

Mr. Robinson: You mean going up?

Mr. Renwick: Yes.

Mr. Robinson: But that is the crap shoot. Nobody can control that. If we could all control that then we would not have gnomes of Zurich. I am being a little parochial here. But the foreign exchange convertibility now and over the last 10 years has become almost unpredictable. That is why it has become more of a serious problem to pick a specific date.

In my experience in working with banks and doing international bank loan agreements, I can say without fear of being wrong that in no loan agreement I have ever seen or drafted for any bank has any date of conversion been contemplated other than the payment date. Indeed, the clause which we lawyers work on, which has now become almost a page long, called the judgement currency clause, says that if you cannot get your \$1,000 on the date when the note was due then the other side will owe you an additional amount so that it is possible for you to buy US\$1,000 with the amount of Canadian dollars that you are awarded by the court.

We draft these clauses to move the date along to the effective payment date, because that was the day when the banker expected to get his money and that was the day when the creditor signed a note agreeing to pay the US\$1,000. That has been the premise which everybody works on. It is not such a significant problem in European Economic Community countries because many of them permit a judgement to be in the foreign currency. The German court, for example, would just say: "You have to pay US dollars. You go out and find it."

Mr. Renwick: I have just one minor comment on it. Is not the very fact that in the United Kingdom it is an alternate response that you can make?

Mr. Robinson: Right.

Mr. Renwick: Is that not, in some sense, part of the equity that is of concern?

Mr. Robinson: Of course.

Mr. Renwick: You are recommending only one part of that question.

Mr. Robinson: I do not think it parses that way. It is merely an administrative technique to have an alternate. If the party adjudged obliged to pay happens to have the foreign currency, then fine, he saves himself the one quarter of one per cent that he has to pay at the bank to obtain the equivalent. But the concept of the judgement being satisfied on the payment date by the currency equivalent is the one followed in the UK. The fact that they achieve the goal by allowing you to pay either in the foreign currency or in the currency equivalent is, I think, merely a technical or administrative matter. It does not go to the concept of judgement date.

Mr. Renwick: What do the New York courts do?

Mr. Robinson: They do not seem to have a problem with judgements in foreign currency, although almost all New York law agreements have judgement currency clauses in them. So, having contradicted myself, I have to say I am not quite sure.

Mr. Renwick: Just because of the tradition of demanding payment--

Mr. Robinson: I pass it over to Professor Castel, who will know the answer.

Dr. Castel: They just do not have the legislation that we have, so they can give judgement in a foreign currency. There is no problem. After all, that is what you owe; you owe foreign currency. All you want is to give the creditor his foreign currency.

The Vice-Chairman: Thank you. We are getting close to adjournment time. Any other questions for the representatives of the bar?

Mr. Renwick: I thought we had passed it.

The Vice-Chairman: Yes. I am saying that based on what has been our past sitting period. Does the Attorney General have any more comments?

Hon. Mr. McMurtry: There might be some further issues that my senior advisers might discuss with the Canadian Bar Association; for example, some interesting issues in relation to conflict of laws and what not, depending on where the breach might have taken place and the applicability of the provincial legislation in those circumstances. But these are matters that we could discuss before we get to the clause-by-clause discussion of this bill in early March.

The Vice-Chairman: Thank you. I would like to thank the representatives of the Canadian Bar Association-Ontario.

Members of the committee, we will sit again on Tuesday to begin other bills coming under the minister. In the meantime, may I thank each and every one of you for your participation today.

The committee adjourned at 5:47 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT

BILL 123, PROFESSIONAL ENGINEERS ACT

TUESDAY, JANUARY 31, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

McMurtry, Hon. R. ~~A.~~, Attorney General (Eglinton PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

Witnesses:

From the Association of Professional Engineers of Ontario:

Cagney, A. C., Executive Director
Lapp, Dr. P. A., Past President
Moull, C. J., President
Smith, D., Legal Counsel; with McCarthy and McCarthy
Wardell, A. W., Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 31, 1984

The committee met at 10:03 a.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT

Consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

Mr. Chairman: I see a quorum. Before we start with the regular business, I would certainly like to discuss a few issues with the committee.

As I indicated to the committee, we are scheduled to sit Thursday evening. We have enough on the agenda now but new groups would like to sit on Friday. I am at the wish of the committee. What do you want to do about these five groups that we have?

Mr. Renwick: I think we should just press on and hear them all if they want to be heard.

Mr. Chairman: If we press on, do we cut off any groups as of now or do we allow any more groups on Friday? We may have until one or two o'clock on Friday. What does the committee wish to do in that regard?

Mr. Renwick: I think we should just press on and not start to cut anybody off until we face a time problem.

Mr. Mitchell: We are sitting tonight, Mr. Chairman, and Thursday night?

Mr. Chairman: Yes.

Mr. Mitchell: We have sufficient groups you say to fill Friday?

Mr. Chairman: As indicated by the clerk, we have about four or five groups that, as Mr. Renwick says, we should hear, so that would take us into Friday. When we would finish would be questionable.

Mr. Mitchell: Mr. Chairman, with respect, we keep moving the schedules around and trying to accommodate to the extent we can. I do not object to the position that the member for Riverdale has taken that groups who wish to be heard, we should try to hear. Unfortunately we have again, each and every one of us, set our schedules based on the time frame that has been accepted. I have a meeting scheduled for all day Friday in Ottawa. There is just no way that I, as a member of this committee, can be here. I scheduled that meeting on the basis of the times we had scheduled.

It again comes down to the question: if we are sitting Tuesday and Thursday what is wrong with a Wednesday night sitting as well?

Mr. Gillies: Mr. Chairman, further to my colleague's comments, I have a commitment some distance from Toronto on Friday. I would prefer to cancel something I had on Wednesday evening as opposed to Friday and I am quite happy to do that.

Mr. T. P. Reid: Mr. Chairman, perhaps we could find out how many would be available on Friday.

Mr. Chairman: All right.

Mr. Mitchell: I know Mr. MacQuarrie will not be and I know I will not be.

Mr. Chairman: Mr. Taylor, how is your schedule?

Mr. J. A. Taylor: I have another meeting on Friday.

Mr. Mitchell: So does Mr. Gillies.

Mr. T. P. Reid: It would appear as if Friday is out.

Mr. Chairman: That is right.

Mr. Mitchell: Now, Wednesday evening, Mr. Chairman. Who is available for Wednesday evening?

Hon. Mr. McMurtry: Or the following Monday.

Mr. Chairman: Mr. Renwick, how is your schedule?

Mr. Renwick: To accommodate my friends in the Conservative Party, I will be available Wednesday night.

Mr. Chairman: Thank you very much.

Mr. T. P. Reid: I cannot be.

Mr. Chairman: You cannot be.

Mr. T. P. Reid: I presume Mr. Breithaupt will be able to be here.

Mr. Chairman: I think in fairness to the people coming before us, we should let them know we will be seeing them Wednesday instead of Friday--if they can make it.

Mr. Mitchell: Yes, agreed.

Mr. Chairman: We have agreed to that and we will have the clerk look into it, would he please?

Just as a matter of information, our clerk, Doug Arnott, has left the hospital and is recuperating at home. He seems to be fine. He had an emergency appendectomy last Thursday or Friday when we were here.

This morning we are dealing with Bill 123, the Professional Engineers Act, and Bill 122, the Architects Act. We are having public hearings.

Minister, before we have our first group, do you have any comments to make?

Hon. Mr. McMurtry: Mr. Chairman, colleagues, members of the public and professionals who are gathered here at these very important hearings, I would like to say a few words at the beginning of the consideration by this committee of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

In Ontario, self-governing licensing bodies exist only to serve the public interest. In connection with the bills before the committee for consideration, the public interest is primarily life, health and safety. Bill 122 is the first major revision in the legislation governing the practice of architecture since 1935. The Professional Engineers Act was last revised in 1969.

These bills are based on the four-year study of the licensing of architects, professional engineers, lawyers and public accountants by the Professional Organizations Committee. They are also based on two and one half years of work on the legislation by the Ontario Architects' Association and the Ontario Professional Engineers' Association in the policy development division of my ministry.

It is the government's view that licensing of professionals by self-governing authorities where licensing is required makes much more sense than direct government licensing. The self-governing authority has great professional expertise on which to draw in setting standards for qualification, standards of practice and in deciding whether an individual who is licensed is incompetent or guilty of professional misconduct.

Since the governing body in each case is predominantly elected from among senior members of the professions, its authority is more respected by members than would be the authority of the government or a group of bureaucrats appointed by the government to regulate a profession.

10:10 a.m.

Because the reputation of the whole profession is at stake, a self-governing body is more likely to protect that reputation zealously by taking direct action against its delinquent members than would a disinterested government bureaucracy. While it does not seem so to some complainants, it is also likely that a self-governing body will take sterner disciplinary action against a member than would a government agency.

Although we recognize there are, from time to time, calls for direct licensing of professionals, and professional organizations are sometimes attacked for lack of action, I am still convinced that, were a government agency to govern

professionals more directly, the public hue and cry would be louder and probably more justified.

These bills confer the fullest authority on the Ontario Association of Architects and on the Association of Professional Engineers of Ontario to govern their respective professions. There are many innovations in the bills. While they are designed to meet the particular needs of the OAA and the APEO in protecting the public, they also contain new and important mechanisms for demonstrating to the public that the organizations are there for public protection, and not simply for private gain.

The number of nonprofessional appointees by the Lieutenant Governor in Council to each of the councils has been increased. For the APEO, there will be between five and seven appointees. For the much smaller council of the architects' association, the number will be between three and five.

As you will recall, the Professional Organizations Committee recommended due note should be taken of the desirability of making appointments so as to achieve a judicious representation of allied professional, paraprofessional, employer-client and general interest. I intend to keep this recommendation in mind in making our recommendations should this legislation be enacted.

Another feature is that one of the appointees for each association will be designated the complaints review counsellor. He or she will have the function of reviewing the procedures whereby the association deals with complaints from the public against members. Another function of the complaints review counsellor is to assure the public that complaints have been appropriately dealt with. I believe the existence of the position will go a long way towards improving public perception of actions by the associations.

Furthermore, a complaints committee is established for each association to decide which of the complaints are serious enough to warrant reference of the issues to the discipline committee for a hearing. The discipline committee of each association is given a full range of penalties that may be imposed for incompetence or misconduct.

The bills will require that, where an architect or professional engineer offers services to the public, he or she must carry liability insurance. Until now, only the Law Society of Upper Canada required members in practice to be insured. The bills provide a mechanism whereby the governing bodies may elect to provide insurance for practising professionals through their own offices, or merely to require proof of insurance as a prerequisite to offering service to the public.

While the legal prohibition against conducting the practice of architecture in corporate form is removed, the specific requirements of the legislation will ensure that professional decisions remain in the hands of professionals. Where architecture is practised in corporate form, the corporation must have a majority of its shares beneficially owned by architects or professional engineers, or by a combination of these

professionals. A minority of shares may be owned by individuals who are full-time employees of the corporation.

These provisions in the Architects Act will permit multidisciplinary architecture engineering corporations to practise for the first time in Ontario. Because a professional engineer has never been subject to shareholder restrictions, no new restrictions have been imposed.

The provisions of the Charter of Rights and Freedoms with respect to employment mobility rights are incorporated in the statute. Membership in the Ontario Association of Architects and the Association of Professional Engineers of Ontario will be available to every citizen of Canada and every person who has the status of permanent resident of Canada who meets the academic and experience requirements for membership. I would like to think there will be reciprocity throughout Canada with this approach, which is in keeping with the charter.

It is important to emphasize at the outset, given the amount of correspondence and the degree of concern that has been expressed, that in this legislation which is currently before the committee there is a new, narrower definition of "the practice of professional engineering" in the Professional Engineers Act, designed to better describe the acts that persons who are not professional engineers or who are not acting under the supervision of professional engineers are prohibited from undertaking. I believe the new definition of scientists and those in industrial or interior design gives them freedom to pursue their beneficial work.

Under the more narrow definition that appeared in earlier drafts of the legislation, the work of many persons that creates no risk to the public is excluded from the definition of the "practice of professional engineering." I should say under the existing narrow definition, as opposed to an earlier draft, the work of these persons is now excluded. Of course, the new definition does not prevent professional engineers from competing with others in areas that are not exclusively within the practice of professional engineering as defined in the statute. I stress this because I think there is still some understandable confusion in the minds of some in regard to the earlier drafts and what is being considered by the committee at this time.

Provision is contained in the Professional Engineers Act for recognizing the continuum of education, training and experience that are involved in professional engineering. Engineering technologists in employment situations who have become competent in any aspect of professional engineering will be able to apply for a limited licence to practise. As long as the professional engineering done by such persons is within the ambit of the limited licence, the limited licensee will have the right to practise professional engineering.

During the process of developing these bills, officials of the ministry have attempted to meet with those concerned about aspects of the legislation to take into account their concerns. Discussion drafts of the proposed legislation were distributed and

significant revisions made, as I have already suggested, as a result of the comments received. In this respect, of course, the major drafter or architect of the legislation in the ministry is Mr. Stephen Fram, who is seated to my left. He has worked for many months meeting with individuals and representatives of the association who understandably have a very significant interest in this matter.

We have attempted to consult as much as is humanly possible because we in the Ministry of the Attorney General do not profess to have technical competence to decide issues relating to the point where protection of the public requires the use of services of professional engineers and architects in the building field. I say in the presence of the many distinguished architects and engineers who are here this morning, I know they have always been a little bit puzzled as to why it should be a lawyer, the Attorney General, who has the ultimate responsibility for the carriage of their professional legislation, given the traditional incompetence of lawyers in scientific fields.

Mr. T. P. Reid: Sometimes even in law.

10:20 a.m.

Hon. Mr. McMurtry: Recognizing this fact, we have been guided by the experience of building code branch officials when the building code, for example, was administered by the Ministry of Consumer and Commercial Relations and by the professional organizations. Therefore, I would welcome the fact that the committee is permitting the Association of Professional Engineers of Ontario and the Ontario Architects Association the opportunity to explain these matters when they are brought into question during the presentation of briefs.

The government intends to move some amendments to the bills during clause-by-clause study. Most of these changes are to correct technical deficiencies in the bills. However, several of the changes are in response to briefs that will be presented to the committee which have already been presented to the ministry.

It is probably fair to say at this point, and for the information of many people who are gathered here, that it is unlikely we will get to clause-by-clause discussion of the legislation until that first week in March.

Mr. T. P. Reid: Mr. Chairman, on a point of order, or of operation perhaps: The Attorney General has indicated he has some amendments. Would it not be helpful if both the committee and the people here had those amendments to save us going over the same ground? We may not all be aware of what the amendments are and this might satisfy some of the people who will not have to go over that again.

Mr. Breithaupt: This is important if the matter of the definition of what an engineer is is going to be particularly changed.

Hon. Mr. McMurtry: That will not be changed.

Mr. Breithaupt: That will not be changed, as to what is in the bill now?

Hon. Mr. McMurtry: No. We are not proposing any amendments to that.

Mr. Breithaupt: Then perhaps others will have to do that. It would be useful to have the amendments, not only to save time, as my colleague has said, but to ensure that the various groups may have other comments to make resulting from seeing those amendments.

Hon. Mr. McMurtry: We will attempt to get the amendments here. There is a practical problem. Mr. Fram has been meeting with interested groups until last evening. Even as a result of yesterday's discussions, I understand there were some amendments we are agreeing to because they are appropriate given this consultation.

We were convinced, as a result of an important meeting that took place yesterday, that some amendments other than those we had already planned should be made. We have a bit of a practical problem concerning when Mr. Fram will be able to finish the cutting and pasting that is required, given the fact that this committee has decided to sit tonight and obviously Mr. Fram's presence will be required here.

We should have these amendments for the committee, certainly before the end of the week and as soon as possible. I do not know if Steve could assist us as to when that might be practical.

Mr. Fram: I would like to have them by the end of the week. Unfortunately, there are a few that have yet to be drafted. Some of the work has yet to be done and there is no one else to do it except for myself.

Mr. Breithaupt: Perhaps a way to resolve it would be to acknowledge that when Mr. Fram has his amendments in order, a set of them could go to at least each of the groups that has appeared before us so that they would know what is being proposed, since, through their variety, they seem to be the parties interested in this legislation.

Then if there were any additional comments, they could respond to Mr. Fram, and he could advise us at the time when we go through the clause-by-clause discussion that either nothing has been heard on this subject or there has been the view that such and so might be further changed. If he would act as sort of the collator for those responses then we probably could get on with the presentations and mutually inform both ourselves and the groups that are appearing before us as to how things are developing.

Mr. Fram: Yes, and I hope as well that if the ministry is called upon to respond and there has been a change that is accepted, we can indicate it during the course of the hearing.

Mr. MacQuarrie: The Attorney General indicated there

would be no substantial change in the definition of "professional engineer" or what have you.

Hon. Mr. McMurtry: We were not proposing any at the particular moment, but again by the end of these hearings we may be convinced.

Mr. MacQuarrie: Do the amendments include any exemptions from the application of the act? A number of groups have come forward, I am sure, to all of us.

Mr. Fram: At present they do not.

Mr. Gillies: Just further to my colleague's comments, I must confess, Mr. Fram, I had rather hoped the answer would be that there were some exemptions contemplated.

I do not want to put the minister's staff in an impossible situation, but the earliest possible time that we could have the amendments before us would not only aid us in our work, it would also put a finer point on a lot of the presentations that people would like to make to us. When we are sitting on this bill for only a week, I just worry about a situation where we can be talking all week about the apple and then at the end of the week, after people have had an opportunity to make their presentations, we start talking about the orange.

Mr. Renwick: In response to Mr. Gillies, it always poses a problem, but I would much prefer to have the flexibility that has been indicated by the Attorney General and by Mr. Fram than to lock them in now to a set of fixed amendments.

I was heartened by the comment Mr. Fram made that he would draw to our attention, in the course of any brief presentation, what the intention of the ministry was with respect to any amendment. I was equally heartened by the comment of the Attorney General that on the question of definition and exemption, which is so uppermost in the minds of many of the people who will be making presentations to us, the ministry is still open to suggestions. I welcome that change in the attitude of the ministry on this bill.

Hon. Mr. McMurtry: It may be that perhaps there is some understandable misunderstanding as to the effect of the existing definition, because when you narrow the definition, the very narrowing of the definition creates exemptions. For example, when you look at the existing definition of the practice of professional engineering, the words "wherein the safeguarding of life, health, property or the public welfare is concerned" represent a very significant narrowing of the definition and thereby automatically create exemptions, in our view at least, for a number of groups who were concerned that they were caught up in the previous definition, such as scientists and people working at the universities and what not in certain specialized areas.

Mr. Gillies: I think that is excellent. I certainly subscribe to Mr. Renwick's comments. It is very encouraging indeed.

10:30 a.m.

Mr. Chairman: We seem to have cleared up that matter. I think we should get on to the business at hand. The first group appearing this morning is the Association of Professional Engineers of Ontario: C. J. Moull, president; P. A. Lapp, past president; W. A. Wardell, registrar; A. C. Cagney, executive director; D. Smith, legal counsel. Gentlemen, would you please come to the front.

Mr. Mitchell: The reason for that is if so that if you have any comments, you have the microphone to be recorded in Hansard.

Mr. Chairman: Mr. Moull, will you please introduce your colleagues and proceed with your presentation?

ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO

Mr. Moull: Attorney General, Mr. Chairman, members of the standing committee on the administration of justice, my colleagues from my left are: Dr. Philip Lapp, past president of the Association of Professional Engineers of Ontario; Mr. Alan Cagney, executive director of the association. On my immediate right is Mr. Art Wardell, registrar of the association, and on my far right is Don Smith, who is a member of the law firm of McCarthy and McCarthy. We are, all five, registered professional engineers and, in addition, Mr. Smith is a member of the Ontario bar.

It is my privilege, as president of the 50,000-member Association of Professional Engineers of Ontario, to make this verbal statement to your committee with respect to Bill 123, An Act to revise the Professional Engineers Act.

In response to the committee's invitation for written or oral briefs, we, as representatives of the self-governing licensing body for the engineering profession in Ontario, submitted a formal brief to your committee, dated Thursday, January 26, 1984. I assume each member of the committee has a copy of the brief before him.

In the brief, we provided an overview of five significant areas that have been ably dealt with in the preparation of the revised legislation, but on which we felt added supportive commentary may be helpful to the committee. These areas are: scope of practice; professional-nonprofessional practice of engineering; the definition of professional engineering; errors and omissions liability insurance, and the disciplinary process.

As spokesmen for the engineering profession, the team of four others and myself now before you at this witness table are prepared to respond to any queries the committee may have on these or any other matters pertaining to Bill 123 where it is felt that input may be useful. I have introduced members of the committee to you.

In registering support of the engineering profession for Bill 123, I wish to inform the committee of the extent and cost of keeping our membership well informed and inviting their comments

and input to the development of a revised engineering statute. That is the democratic process in action for the past seven years, during which time the membership of the association has grown from approximately 42,000 to 50,000 members.

As early as mid-1977, a co-ordinating committee within the APEO invited comments or input on the work of the professional organizations committee research directorate and its background papers from the APEO membership directly as well as from the 42 chapters throughout the province.

Later in 1977, a copy of the APEO brief to the professional organizations committee entitled, An Engineering Perspective, was sent to every member of the association.

In 1979 a further brief was made to the POC as a response of the profession to the POC staff study entitled, Professional Regulation. A copy of this document was sent to each member of the APEO. Between 1977 and 1983, our official publication, earlier called the Engineering Digest and now known as Dimensions, carried extensive reporting on the progress of the evolution of the new legislation, such as, full sections on the POC staff study, full sections on the POC report, and every formal response from APEO to the Attorney General re the POC reports was published.

Reports and conclusions of many APEO council workshops, the details of the joint agreement between the professions of engineering and architecture were all spelled out in our publications to the members.

During early 1983 a copy of the discussion draft of Bill 123 was sent to each of our members inviting comments on the proposed new legislation. In addition, responses to the Attorney General resulting from our council workshops and meetings were published for our members in our official publication, Engineering Dimensions.

The proposed legislation has been the subject of presentations and discussions by members of council or by the staff of the association at most of our 42 chapters around the province. Since 1977 a conservative estimate of the engineering profession's out-of-pocket cost to maintain good communications with our members on this important topic is \$250,000. We consider it money well spent.

As is noted in the conclusion of our formal brief, there has been an overwhelming consensus among our members in favour of legislation that would provide for improved service to and protection of the public. I wish to reiterate that the Association of Professional Engineers of Ontario believes Bill 123 does achieve that purpose and recommends that it be enacted.

It is our intention to have most of our team of interveners and observers present during the full period of public hearings on Bills 123 and 122, and we will be prepared to respond to questions from the committee. I would ask, though, some procedural clarification from the chairman as to whether we will have an opportunity to make an added statement to the committee at a later

stage in these proceedings on any point put forward by other interveners with respect to Bill 123 that we feel has not been clearly presented.

Gentlemen, this concludes the initial oral statement by the Association of Professional Engineers of Ontario.

Mr. Breithaupt: Before we begin some comments or questions, in each of the variety of presentations that are before us we are going to be dealing with particular sections and references. Will the clerk again be providing us with a cross-reference or checklist of the various sections that are spoken to? If that is the case--and it would be a great advantage to us--we would be able on the clause-by-clause discussion to know just who spoke about what particular section.

We may not be able to remember each of the presentations in detail and, indeed, some of the groups that sent in letters or presentations may not be able to be heard, depending on the time. If you could arrange that kind of checklist or reference by the time we go through the clause by clause, we would then be able to refresh our memories as to what people said and attempt to compare the various views on a particular section.

Mr. Chairman: I quite agree, Mr. Breithaupt, that that can be attained.

Mr. Mitchell: Mr. Chairman, the latter comments made by the representatives at the table dealt with the opportunity to address the committee again at some future time, depending on what changes were made. I think this has to be addressed right at this time.

We have a schedule established for a great deal of work that the committee has had, and obviously the clause-by-clause deliberations will be public. Certainly if there is additional information that they want to make the committee aware of, I think the only recourse they have, because of the time constraints, is to put those in writing to us, because we will not necessarily be dealing with this in clause by clause in the time frame that is indicated. So I think we have to deal with that issue right at this time.

Mr. Gillies: I think there is further issue there, Mr. Chairman. I certainly have no problem with Mr. Moull's group coming back to make another presentation. In fairness, though, if they are going to be commenting a second time on some of the other submissions, will other groups then have an opportunity to comment on the recapitulation by the professional engineers? I appreciate that this is the largest single professional group concerned with this bill, but there are others, and we have to be sure everybody has equal access and a fair crack at this.

10:40 a.m.

Mr. Mitchell: That is the point I was trying to make, Mr. Chairman. We have to deal with the issues at hand and deal with them fairly, and we have to recognize that there are

limitations on our time.

If we agree they will not have an opportunity to speak, but will at least be given an opportunity to resubmit comments on what has happened in committee, that is fine. But if we once open the door, then we are going through the process again, and I am afraid we cannot handle that.

Hon. Mr. McMurtry: With respect, Mr. Chairman, I suggest, having wrestled with this process for many years now and recognizing the highly technical nature of many of these matters, the committee may wish this group, or certain members thereof, to return to assist the committee in outlining some of the technical areas.

Mr. Mitchell: You mean during the clause-by-clause.

Hon. Mr. McMurtry: We have to keep an open mind, I say with respect, and not make any decisions now that may appear to be rigid. We are dealing with legislation of a highly technical nature. I am sure many members of the committee are better qualified than I am to understand some of the scientific or technical aspects of engineering or the practice of architecture. I know I can benefit from any assistance I can get on any given issue.

The association has, of course, been very helpful, as one would expect, in the development of this legislation, and has handled the whole matter in a highly professional and responsible manner, keeping the public interest to the forefront at all times. I think we should maintain a degree of flexibility and wait until we know just what issues may arise, and we know about some of the issues, before we decide who might be invited back.

Mr. Mitchell: I do not have any objections to what the Attorney General is saying. I was just pointing out to the people present that, unfortunately, we do not have the flexibility we might otherwise like to have. I wanted to make everyone aware of that.

Mr. J. A. Taylor: Could I have it clarified whether the people before us are seeking any amendments, or do I surmise from their brief they are satisfied with the legislation as it is?

Mr. Moull: At this time we are satisfied with the legislation modified by the discussions that have taken place since the bill was printed at the time of first reading. A number of the discussions that have ensued have resulted in some of the modifications I believe Mr. Fram will be mentioning. We are in support of the total bill with the amendments.

Mr. J. A. Taylor: I gather when those amendments come forward they will embrace any objections you had, and when those proposed amendments are completed in the present bill before us they will satisfy your association.

What I hear APEO saying is that it will have a watching brief throughout the proceedings and, presumably, if the committee

wishes to bounce off any ideas, its representatives are available. Assuming there may be other witnesses appearing who convince the committee some amendment might be necessary, then presumably the committee will ask, "How does that strike you?" Is that the type of role you were thinking you might play?

Mr. Moull: Yes, it was our intention to be present so that the committee could bounce off us questions that may result from any of the briefs presented.

The second part of my suggestion of a later resubmission was in the event we heard something from other presentations we felt did not come through clearly to the committee. Then we might have the opportunity to clarify from our perspective what we believed the committee might be hearing on particular aspects of the presentations.

Mr. J. A. Taylor: Of course, Mr. Chairman, that leaves a hiatus in terms of the bill before us, and, presumably, before most witnesses who will be appearing before us. The bill is ultimately conceived by the ministry. That does pose a bit of a problem unless, as has been suggested, the minister or Mr. Fram could flag any of the points as they come before the committee and address those points, indicating either they will be addressed or not and, if they are going to be addressed by amendment, in what way. I just make that observation, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Taylor, that seems reasonable. Mr. MacQuarrie.

Mr. MacQuarrie: Mr. Chairman, I was intending to clarify with the representatives of the profession here today some aspects of the bill that have been troubling me. Is it all right to start?

Mr. Chairman: Just before you do, I think Mr. Elston had a comment on this question.

Mr. Elston: Mr. Chairman, thank you. My points are similar to those raised by Mr. Taylor. If we are considering the bill, we really ought to know the bill we are considering in terms of having those amendments available to us at as early a stage as possible.

Obviously the group before us does know about those amendments or their content, and perhaps it would not hurt, if the formal wording of those amendments is not quite yet available, to have that material put to us, so we know as a committee what is being done.

I do not think trying to determine what is being arranged between two private parties, so to speak, in a public forum is going to help us in any way to deal with the legislation in front of us. If it is possible that we could see those, or even the intent, maybe that would diffuse a good number of the concerns, because from the material I have received from various sources I understand there are a good number of concerns, and perhaps amendments will address those concerns. If we had those at an early stage, I think that would help the whole proceeding.

Mr. T. P. Reid: I will not belabour the point, but there are also other people out here who, with respect, gentlemen, may not agree with the amendments you and Mr. Fram presumably have agreed with. I think we owe it to those people as well to have an idea of what these amendments are. Frankly, I do not know how we can proceed if we do not really know what the hell we are talking about.

Hon. Mr. McMurtry: You have a bill before you, and that is what we are talking about--

Mr. T. P. Reid: I know, Mr. Attorney General, but both you and Mr. Fram have indicated there are amendments. If we are not talking about the same thing--I am presuming that these amendments are obviously not dealing with the principle of the bill. I am presuming that they are minor matters, but they are still going to affect other people.

I am taken with the comment someone made over here. Could we not, at least by this afternoon, have just a list, not necessarily the details, of those areas you are thinking of amending and the way in which you might amend them? Otherwise, we are sort of wandering around in the dark here. We could be talking about something generally that you are going to amend and clear up.

No, you are shaking your head.

Mr. Fram: No. I mean the nature of the amendments that we have been thinking about is, by and large, very technical and very narrow. When those issues are raised, if they have been considered, I will bring them to your attention. It is simply impossible for me to be here, doing what you suggest.

Hon. Mr. McMurtry: We have a bill before us, I suggest, with respect. If any of the members have questions, as undoubtedly some of the members will, of this professional association in relation to any specific sections that are presently before you, we will advise the committee if any amendments to them are already being considered, so you will know just what we are doing.

I agree it is incumbent upon us to do that, so if any concerns may be raised in the presence of the association in relation to any specific sections now, we will advise the committee members if we are thinking of even the most minor amendment to those particular sections, so that will be part of the discussion.

Indeed, with respect to any other groups that will be appearing before us and who will have concerns about specific sections, we will immediately advise them up until the time we have all of the amendments circulated.

10:50 a.m.

Mr. T. P. Reid: The other people are going to have to be here. That is the whole problem. They are going to have to be here for the three days, as well, in case something comes up.

Mr. Renwick: I do not want Mr. Moull to be under any misunderstanding about the second point raised; that is, a right of rebuttal for his organization. I think that has to be left to the development of the work of the committee and, if the committee wishes to have a further comment from you on any matter which is contradictory, then of course in the normal operation of the committee we would request a comment from you. But we would be ill-advised to leave you with the impression that you would have a right of rebuttal, because you can understand there then is no end to the process we are engaged in.

Mr. Moull: I understand fully, Mr. Renwick.

Mr. Gillies: Are we going to commence questioning?

Mr. Chairman: Further to this discussion, have you anything to add?

Mr. Gillies: No, I have some--

Mr. Chairman: Fine. Mr. MacQuarrie is the first questioner.

Mr. MacQuarrie: You mentioned in your comments on the bill that the definition of the practice of professional engineering had the advantages of brevity and clarity. I will certainly agree it is brief but, with respect to the aspect of clarity, we will get into that a little later.

How many specialties does your association embrace in terms of types of engineering members are engaged in?

Mr. Moull: I would like to call on Dr. Lapp to respond to this area of questioning with regard to the definition.

Dr. Lapp: In answer to your question on the number of specialties, there are at the present time seven branches of engineering that are used, but in terms of the word "specialty," I suppose it could go on to the hundreds because each branch has its own special areas.

Mr. MacQuarrie: Could you outline the seven branches?

Dr. Lapp: The typical main branches are mechanical, civil, electrical and chemical engineering. Those are the ones with the major numbers in them. There is mining engineering, which is a traditional one--it has fallen off a little bit recently--and metallurgical and materials engineering, which make up the seven.

Other areas of specialization have come on recently, such as industrial engineering, which is now growing rather rapidly but is not recognized by the association per se in our branch structure.

I might say, though, that our branch structure has more or less disappeared into oblivion in the last few years. We do bring a person in under a branch title but, beyond that, and beyond having Lieutenant Governor appointees in a branch area, we do not

recognize the branches in practice any more, as we did before.

Mr. MacQuarrie: You mentioned chemical engineering. What, in your opinion, would be the difference between a chemist and a chemical engineer?

Dr. Lapp: A chemist, of course, is a scientist who has been trained in chemistry and in related areas of science and mathematics. A chemical engineer is a person who is trained in the art and practice of chemistry, to be sure, but he is also an engineer in the sense that he takes on professional responsibility for engineering works related to chemical matters.

An engineer has a different bias because he is dealing with professional practice and carries out work which relates to his responsibility to the public. That is not to say that a chemist does not--

Mr. MacQuarrie: I was just wondering how a chemical engineer fits within the definition of professional engineering as laid out in the act.

Dr. Lapp: If we go to the definition in the act, perhaps it would be worth referring to clause 1(m). It cites perhaps three aspects of professional engineering. There are a number of acts--designing, evaluating, etc.--and then, "...wherein the safeguarding of life, health, property or the public welfare is concerned...." Further, it "requires the application of engineering principles." Those are the three cornerstones of that definition.

Mr. MacQuarrie: Could both a chemist and a chemical engineer advise as to public safety, health, welfare, etc.? Is there a prospect of the two being somewhat confused?

Dr. Lapp: If you apply all three, the narrowing down of each part of that definition brings it almost to a point, sir. I would suggest that under this definition a chemist would not fall into the category of engineering work.

I recognize that our colleagues in the sciences are likely to tell us they do not agree with that narrowing of the definition. At one stage we did have an exemption for physical science. The position we have taken, which we can discuss here, is whether or not we need an exemption for the natural scientists in view of this definition as laid out in clause 1(n).

Mr. MacQuarrie: Looking at the definition, would an orthopaedic surgeon, for example, dealing with leverage, not be applying engineering principles every time he carries out an operation in the public interest?

Dr. Lapp: Yes. I would say a surgeon is not far from doing what engineers do, in a sense.

Mr. MacQuarrie: There is one other thing that troubles me. I asked you about the classification of engineers as to

specialties. We have a recognized branch, the soils engineers, the geophysical engineers, and we have the geologists.

I am living in an area where this is quite a concern. We have extensive beds of clay deposits of the old Champlain Sea. The bearing capacity, the likelihood of slippage and the rest of it is always present. There was a tragedy in Quebec, near Jonquière. The people who seemed to know the most about how and why it happened and what should be done to correct it were some geologists who were brought it.

Dr. Lapp: I am sure they would be.

Mr. MacQuarrie: This is where I am having some difficulty in coming to grips with the definition, particularly where public welfare is concerned. "Public welfare" is a very elastic phrase. The censor board acts in the public welfare. Words like that tend to cause me some concern.

I have had some representations, to be frank, from the natural scientists, the physicists and some of the people dealing in computer work, software, construction and the rest. It is hard to draw a line between electrical or electronics engineering and the mathematics involved in computer work. You find a sort of merging of the two.

It is my feeling that the definition, although it is brief, leads to a certain confusion. That is why I was asking about the difference between chemical engineers and chemists and electronics engineers and so-called electronics specialists. All of them are doing design work of some sort.

Mr. T. P. Reid: Would the definition of the application of engineering principles help?

Mr. Moull: Perhaps I could call on Mr. Smith to add to what Dr. Lapp has submitted to the committee.

Mr. Smith: Gentlemen, I must say at the outset that the formulation of the definition has not been carried out without considerable difficulty. During the course of the development, we canvassed a great many definitions from various jurisdictions, principally in North America. There was a significant US jurisdiction, as well as the other Canadian provinces.

11 a.m.

To give a little history, we refer to the existing definition of professional engineering as a laundry list approach. It first specifies a number of activities such as designing, evaluating or advising on. Then it applies it to a host of things that were considered at the time of preparation of the current act to be engineering work. But it is known when you take that approach that with the progress of engineering, the list is inevitably going to be deficient. That is probably the most significant reason why the laundry-list approach was not adopted.

The second aspect of that is when you use general terms, you

inevitably bring within the definition activities that were not intended to be brought in. I constantly use as my example of that in the existing definition, advising on an internal combustion engine. I think the garage mechanic who says you need a tuneup is literally advising on an internal combustion engine. In other words, it was never intended that be brought within the ambit of professional engineering.

So we have the two problems. We want to have something that is not constantly out of date through the laundry list and something with more precision. I suppose the definition in Canada that comes closest to what is presented here is that of Alberta. They adopted the approach of saying it was those acts that involved the application of mathematics, chemistry, physics and other natural sciences.

The prime objection to that approach in our view was that there are many people who use mathematics, chemistry and physics. It was for that reason we adopted the wording "the application of engineering principles" to distinguish those from the mere application of the sciences, which every physicist or chemist would use. The question could very well be asked, what is the application of engineering principles? I think it is fair to say that in any factual situation people who are trained in the art will have no difficulty identifying the application of engineering principles.

To call upon Dr. Lapp to give a treatise at this moment on what is encompassed within engineering principles is probably an impossible task. However, that is the approach that has been used --that in a given factual situation there probably would be no difficulty. So this language was used to distinguish us from the scientist. It was for that reason we are proposing that exemptions are not necessary. By definition, a physicist would not be applying engineering principles, although he may be using the same tools, that is, mathematics, physics and chemistry.

Mr. T. P. Reid: That clears it up, doesn't it?

Mr. MacQuarrie: No, I am afraid I am still lost with this terminology "application of engineering principles."

Mr. Elston: Perhaps a treatise would yet be of assistance.

Mr. MacQuarrie: I can conceive of engineering principles being applied, as you suggested, in many walks of life, including the natural sciences. You talked about tremendous advances in the engineering profession--and there are--but at the same time there are tremendous advances being made in every field of technology across the whole scientific spectrum.

It could well be that even if you do not foresee any conflict at the moment between one or another of the disciplines and the engineers, advances could well create definite conflicts. One of the things that comes to my mind is developments in the computer field where electrical or electronic engineering and mathematics and all of the rest of it are rapidly emerging,

particularly in the software production. I suggest some physicist could well be involved in the hardware production as well.

Dr. Lapp: Without turning this into a treatise, I would like to stress a couple of things I did not before.

First, for what we call engineering we have to go back originally to the curriculum that forms the engineer or the scientist because where they go from there gets somewhat diffused in our labour force. The engineering curriculum stresses the applied sciences as opposed to the pure sciences. We do get our full measure of pure science in the engineering program, but then we go on to take pure science and apply it to real world in practical situations. While some science programs do that to a greater or lesser extent, that is the ethos of engineering, the application of the pure sciences.

There is another dimension that is very important to bring up here and that is there are three other dimensions that go into engineering principles and practice, which I suggest are unique to engineering in the context of putting it together with science. These are the social dimension, the economic dimension and the humanity dimension. Engineers in their formation and training have these parts of their curriculum, nontechnical parts, related to what this act is all about, protecting the public and the social, humanities and economic side. I think that draws up the real distinction between what engineers do and what scientists do in the sense of this engineering act.

Finally, I would like to say we are not really trying to support the definition we have here but rather trying to arrive at a definition that is adequate.

Hon. Mr. McMurtry: If you have a better one, let us know.

Dr. Lapp: I wish we had. I can say that is really our position. We are not trying to defend it; we are trying to find the definition that will suit.

Mr. T. P. Reid: I was interested when this gentleman here, the lawyer-engineer, indicated this was an art rather than a science. I do not know if you use that word advisedly in describing engineering or not. Is that one of the ways we differentiate between a scientist and an engineer? You are more dealing in an art situation as opposed to hard facts, experimental science, etc? Did you use that word advisedly?

Mr. Smith: I was unaware I used the word "art." If I did use it, it is not appropriate to engineering. If I did say that, I did not intend to say that. I might have meant that it is an art trying to come up with a definition.

The gist of what I am saying is it is a three-pronged definition. All three tests must be met before you fall within the definition. It is my view that the element of the application of engineering principles will distinguish the pure scientist from the engineer. I am suggesting, in any given case, that would be established by expert evidence that would be presented.

Obviously, if you take the bare word "designing," it can range through everything from engineering to dresses. That does not advance you very far. The real test, assuming that a lot of other activities safeguard life, health, property or public welfare, is the application of engineering principles.

Mr. T. P. Reid: There is no sort of laundry list where you can say these are, in fact, engineering principles, without going into Dr. Lapp's treatise.

Mr. Smith: Yes, I think a laundry list could be prepared that arguably might even be exhaustive at some point. The only thing I know for sure is that two weeks from now, it will probably not be accurate. It was for that reason that approach was dismissed. I may say this type of definition is common throughout most jurisdictions in the United States.

11:10 a.m.

Mr. T. P. Reid: What you are telling me is that if somebody wants to apply for recognition under this act, it is going to be an art approach as to whether or not he is going to be able to become a professional engineer under this act, in the sense that he or she is going to have to apply, the admissions committee is going to have to review it, and there are not going to be 10 or 12 or 15 or 40, or whatever you like, hard scientific approaches. You either fall into the category under this or you do not. Each person who wants to apply is going to have to be taken on his merits and pass a review test.

Mr. Smith: I would say that the practice of professional engineering is used less with respect to entry to the profession than it is used in the case of preventing unauthorized practice. In other words, the admissions procedure is quite clear-cut and virtually unchanged from the current situation. I do not think the impact of the definition in any way affects the admission requirements for people coming into the profession.

Hon. Mr. McMurtry: If I might just assist, Mr. Reid, it seems that virtually all of the volumes of correspondence I have looked at in relation to the definition do not relate to attempting to admit or be admitted to the practice of professional engineering, but the concerns expressed are by people who do not want to be caught up in the definition, who want to be clearly excluded from the definition. That has been the thrust of virtually every letter that I can recall at the present time.

Mr. T. P. Reid: Can I ask you why they wish to be exempt?

Hon. Mr. McMurtry: Because they are concerned that they may be prosecuted.

Mr. T. P. Reid: I presumed that was the reason, and that is what concerns me more than anything else.

Could I just ask a question about the technologist? The act provides that a professional engineer will have to approve

anything that a technologist does and therefore be liable and responsible. What kind of technologists are we talking about, or do we get into the same problem as trying to nail down what a professional engineer is?

Dr. Lapp: This has been a long discussion and I am sure you will hear from the technologists before we have finished. They do have a designation, CET or certified engineering technologist, which is not recognized legally but it is a designation. They are the ones to describe this, but they have a program that takes them through the post-secondary system.

I guess it has been contentious for some time as to whether or not technologists can and should practise engineering. The provisions in the new act cover that very well in two or three ways, first by requiring a licensee to assume professional responsibility. The act of professional engineering, as we defined it before, could be done by any person, which of course would include a technologist.

Also, in cases where there is very specific need for a professional engineer in a narrower area of practice, we are providing in the act, or the act is providing for, a limited licence, to ensure that the technologist or person could meet requirements in a limited area and could be limited licensed. There are other provisions in the act for exempting, which are rather lengthy. At any rate, there are many situations where a technologist can practise engineering.

Mr. T. P. Reid: One of the definitions of a technologist would be somebody with some kind of post-secondary education in a community college.

Dr. Lapp: Not necessarily.

Mr. T. P. Reid: You would not include, for instance, a fellow who has been in construction, say, for all his life, who sometimes does design work or draws up plans.

Dr. Lapp: Could do. In the act it just calls for "any person," so the association has to make the judgement. Whether or not the person is a graduate of a post-secondary program, I do not think is a requirement, certainly not in the act.

Mr. T. P. Reid: Mr. Moull, just to go back to the point of the people who want to be exempt from this act, I would think that in the public interest as many people as possible who are dealing with the public in these matters should be within the ambit of the act and therefore responsible and liable. Is that the position of your association?

Dr. Lapp: In one word, yes.

Mr. T. P. Reid: I have just one question further about the insurance. In your brief you have indicated that insurance would be available. I presume that when you say "available" in your discussions with the insurance industry you mean available at a reasonable cost or at what you consider a reasonable cost.

Mr. Moull: Mr. Wardell, would you respond, please?

Mr. Wardell: Yes. We feel, though, that we do have to put certain minimum limits on what must be carried. At the present time there is errors and omissions liability insurance available to the consulting engineering firm. This is quite expensive. The premium might range from several thousand dollars a year up to several hundred thousand dollars for the larger firm.

However, an individual insurance policy is available to employed engineers at the present time. I would think the premium for maybe \$10,000 worth of fees that they might obtain in a year by moonlighting or as an academic doing work outside his university would be in the neighbourhood of \$400 to \$500 a year. In developing our regulations, we are making sure this type of insurance will be available.

Mr. T. P. Reid: When you say "will be available" you are not thinking of self-insuring as an organization at all.

Mr. Wardell: Not at this time. We did study it. We thought that, with 50,000 members out there and requiring every member who is offering engineering services to the public to carry liability insurance, we would have to work into such a program over a period of years. We do not have the experience on claims. As a matter of fact, at the present time we are going to have difficulty identifying some of those who should be carrying insurance.

Mr. Renwick: Mr. Chairman, two or three areas that are of concern to me have been touched on by Mr. MacQuarrie and Mr. Reid.

In my profession, which is the legal profession, the public interest, within very broad limits, is served and protected by the Law Society of Upper Canada--that is the purpose of it--and the private interests of the individual members of the profession collectively are left, at least in theory and for a good part in practice, to the Canadian Bar Association, Ontario division. That has been the tradition. The bar association is a voluntary organization to which members of the profession may or may not belong.

As I understand it, among the professional engineers there is no such division and, in fact, this organization has been traditionally and will continue to be in the future not only the body charged with protecting the public interest but also the body that would, at least within its tradition, further the private interests of the engineering association collectively. Am I right or wrong on that operation? If there is another organization, would you let me know what it is?

11:20 a.m.

Mr. Moull: Over a long period of time, the Association of Professional Engineers has provided some minimal services to its members, always being aware that any such services are not in

conflict in any way or adverse to the public interest. Such services have been generally requested by segments of the membership and, in fact, have been approved for carrying on by the membership.

It is certainly not the intention now or in the future that any expansion of services to the membership would take place. In fact, in the provisions of the act, in the bylaw provisions, there is provision made for development bylaws for providing insurance plans other than the professional liability that we were talking about a few moments ago, an employment advisory service and retirement savings plan.

Just commenting on those plans, the group insurance plans in effect now are not carried on by the Association of Professional Engineers of Ontario. They are directly between the members and the Canadian Council of Professional Engineers, which is the umbrella organization co-ordinating the activities of the provincial licensing bodies right across the country, the 12 provincial licensing bodies. At the moment, we are not in the group insurance business in any way, shape or form in the direct sense.

In the employment advisory service, we are not an employment agency. It is a service, if you wish to call it that, which provides guidance and advice to members of the profession who are unemployed or who wish to seek a change in employment, as well as a focal point in which employers of engineers can come and find out if there are people potentially available for the type of position that they may have available.

While on the surface this may appear to be a service to the members, it is just as equally, or more so, in the public interest in the sense that employers have access to information of availability of engineers in order that they can employ these people in industry or in consulting areas. Presumably, they will be working in the public interest when they are employed.

A further example of this sort of activity in the public interest is the concern of the profession this year about the large number of young engineering graduates who have come out of the academic systems in Ontario, out of the engineering schools in 1982 and 1983, and who have been unable to find engineering employment.

Of course, to become full members of APEO they need two years' worth of engineering experience before they can become registered. I think it is very much in the public interest that every means be taken to utilize the skills that these young people have gained through their education experience and which have been subsidized to a very large degree by the public purse. It is very much in the public interest, if it is at all possible, that the economy can be encouraged to improve itself so these people can find engineering jobs so that they can become registered. That deals, to some degree, with the so-called employment advisory service.

With regard to the retirement savings plans, these are plans

which the association became involved with at the behest of our members many years ago, actually before the time that the traditional RRSP as we now know it came into being. There are a very few of our members who are actually participating in two different plans. If we were not locked into this, I suspect we would have a feeling that we would just as soon be out of the RRSP business because there are many other institutions that are much more capable of providing these than we are. In these cases, of course, we are only a pass-through operation between the member and the insurance company or trust company that actually does all the work with respect to the plans.

As to your question as to other organizations that provide services, it depends on the definition of services. There is an organization called FESA, the Federation of Engineering and Scientific Associations, a very responsible group that is an umbrella organization for a number of bargaining groups throughout industry, utilities and other areas where engineers work, providing collective bargaining type guidance to these groups.

It is an area where the association has been asked many times over the years to become the advisory group or to get involved in collective bargaining. As long as I have been involved with the profession, the association has always said, "This is not in the public interest and we as an association cannot become involved in collective bargaining." I guess it has been a case of more power to a group like FESA to provide this type of advice to the groups that are its constituents.

As far as other types, welfare services, are concerned, there is an organization called CSPE, the Canadian Society for Professional Engineers, which has something up towards 3,000 or fewer members who are mostly engineers and some associates. It is the endeavour of that organization to market services it feels will retain members and attract more members to its association and provide welfare services for anyone who wants to belong to that group.

As I indicated earlier, the modest services we as an association provide have been provided for a long time. It has been deemed by the association, the council and outside advice we have sought that none of these is of any significance, or these are certainly not against the public interest in any way, shape or form, and have been broadly sought by the membership of the association and granted knowing they are not against the public interest.

I do not whether I have answered your question, but I have tried to. I might also add there are probably other technical organizations that have engineers in them who also provide services. I think of the Engineering Institute of Canada, the Canadian Society for Civil Engineering, the Canadian Society for Electrical Engineering, the Institute of Electrical and Electronics Engineers Inc., IEEE; it has three "Es" to it.

The Consulting Engineers of Ontario is another good example of an organization that is made up of members of APEO or companies that have set up their organizations separate from APEO

as self-interest groups on behalf of their members and their companies, and that is up to them. They are practising engineers, but the services they are providing are in their business interest and separate entirely from APEO.

Mr. Renwick: I appreciate your answer. I asked the question because I happen to believe the public interest function should be clearly and precisely delimited from the private interest function, because one thing all professionals, including lawyers, have in common is the ability to identify the individual collective private interest with the public interest without any difficulty. That is the concern I have.

If I had my druthers, and I do not, in drafting the bill I would have made certain that with whatever time lag was necessary the voluntary private functions of the association be excluded from the operation of the act, but that is a personal preference.

11:30 a.m.

Mr. Moull: I might comment on that. One of the organizations I mentioned, the Canadian Society for Professional Engineers, of which I am a member as a matter of fact, is made up of around 3,000 professional engineers.

At the time they established themselves--which was about five or so years ago--and in effect separated from APEO to set up their own organization with APEO's blessing and financial support, they indicated--and it is documented--that they had no interest in taking over APEO's activity in employment advisory service and the insurance type activity. That is handled by the national organization. As a welfare service body to the members they intended to attract, they had no objection to APEO carrying on the activities it had been doing for some years. They did not object to it carrying on that service to the total membership who wanted to avail themselves of those so-called services.

Mr. Renwick: I would turn then to the second side of the two-sided coin. I am referring to section 14 of the bill before us which is the mandatory obligation of the registrar to issue a licence. I am particularly interested in the qualification, "has complied with the academic requirements specified in the regulations for the issuance of the licence."

Is it possible for the committee to have either the regulation or the academic requirements intended to go into the regulations so the committee will have a clear idea of the qualifications the person must have in order to be entitled to membership?

Mr. Moull: Perhaps I can ask Mr. Wardell to give you an overview of the admission process, including the accreditation process that takes place with respect to the Canadian engineering schools.

Mr. Renwick: Perhaps before Mr. Wardell goes on with the overview, do we have the academic requirements specified in the

regulations? If we have, could the committee have that either in draft form or otherwise?

Mr. Moull: It is available.

Mr. Cagney: Graduation from an accredited engineering program in Canada or equivalent.

Mr. Renwick: I would like to know then what are the institutions which are accredited so that if I hold the pieces of paper from that body I am entitled to membership.

Mr. Moull: We consider through the process that is carried on by the Canadian Accreditation Board that students graduating from 11 out of the 12 schools in Ontario that provide engineering programs are acceptable. If their programs are accredited by the CAB, students graduating from those programs are acceptable education-wise to the association.

There are a number of other engineering schools across Canada whose programs are similarly accredited by the Canadian Accreditation Board. We also recognize those programs as being acceptable education-wise for admission to the association. In addition, there is a reciprocal process with an organization in the United States equivalent to CAB called the Accreditation Board for Engineering and Technology. We recognize graduates from the engineering programs accredited by ABET as being equivalent to the accreditation process for the programs from the Canadian engineering schools as far as the education requirement is concerned.

Mr. Renwick: It would be sufficient for my purpose if I could have a list of the institutions in Canada and the branches or bodies within those institutions that you believe meet the requirements and who provide the academic qualification you will accept. It seems to me to be a very specific question. Is that possible to have?

Mr. Moull: We can do that. We do not have those at hand right at the table here, but we can provide them to you.

Mr. Renwick: I understand that.

I asked that question because it seems to me to be, among the other qualifications that are here, the most important qualification for entitlement to membership. I would like to understand both who is included in it and, on the other side of the coin, who is excluded from it, and I think the easiest way for me to do this is to have a list of the faculties, universities, colleges or whatever the educational institutions are that permit a person to demand membership in the association, provided he meets the other requirements in section 14.

Mr. Moull: To assist you, Mr. Renwick, I might add that, in addition to membership in APEO by graduates from the accredited engineering programs in Canada and the United States, there is also a process through which others who wish to apply for membership can enter the association by passing a program of

exams. You might call it a bridging program from the education they may have to the equivalency of the university engineering programs. It is also for people who come from offshore who are from engineering schools that are certainly not accredited by our Canadian accreditation program so that they, too, can enter the profession by fulfilling certain educational requirements and writing certain exams.

Mr. Renwick: I want to stick clearly to the citizen of Canada who is living in Canada and takes his education in Canada. What pieces of paper does he have to present to the registrar in order to be admitted?

Mr. Moull: We will provide that information to you as soon as we can.

Mr. Renwick: As the Attorney General said, the great bulk of the representations that have come to us relate to the two sides of the question: who can get in if he wants to get in, and who is excluded if the business he is carrying on is jeopardized by this bill.

The third aspect of it is the reverse side of that coin, the draconian prohibition in subsection 12(1), which states: "No person shall engage in the practice of professional engineering or hold himself out as engaging in the practice of professional engineering unless the person is the holder of a licence, a temporary licence or a limited licence." It then goes on further in subsection 12(2) to say: "No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization."

There are a number of ancillary clauses to that, but I do not think in the consideration of our problem we should overlook the penalty provision in subsection 41(1), which states: "Every person who contravenes section 12 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000."

11:40 a.m.

My concern, therefore, is a very real concern to the extent that we accept the principle of the monopoly necessary for the protection of the public interest. As Canada has developed in its expertise, its qualifications and the diversity of its professions, to what extent are we likely to be either excluding persons from their chosen businesses and professions or leaving them in a position of not knowing what their authority is in not complying with the provisions of section 12 of the act? That seems to be the key problem.

Mr. Moull: Mr. Wardell will answer that, Mr. Renwick.

Mr. Wardell: Over the past number of years, operating under our present act, we have reported to us 200 or 300 cases a year of persons who are not members of APEO who have been holding

themselves out to the public as professional engineers or as practising engineers. Our process, and I do not see it changing under new legislation, is that we write a warning letter to the individual explaining the act and how he is in violation of it.

Out of that, we end up each year with perhaps 15 cases actually going to the courts. Those cases are invariably people who have been practising engineering and the cases have been reported to us by their employer, saying: "This man is incompetent. What are you doing licensing someone like this?" Those are the hard cases and very few of them go to the courts.

Mr. Renwick: I hear a number of messages in that. One is that you basically act on complaints.

Mr. Wardell: We act on--let me use the term "holding out"--in other words, using the title. Many of them hold out or use a title we feel is contrary to our act inadvertently. They are quite innocent. They do not appreciate that there is a Professional Engineers Act.

We look through the yellow pages of the telephone directory and employment ads, things like that, and we do write warning letters. In 90 per cent of cases, they thank us for the letter and that is the end of it. What are reported to us, generally from the employer, are cases where the individual has been practising engineering and is indicated to be incompetent in his employment.

Mr. Renwick: I guess all the people in the room, apart from the members of your association and the architects' association, can breathe easier now and do not need to make their presentations to the committee.

The representations that have been made to us over the period this bill has been in operation are a very real concern. Persons who believe themselves to be scientists, on the one hand, or technologists or technicians, on the other hand, are caught within the definition of engineering. They are, therefore, subject to the investigative processes necessary to bring into effect the obligation that is being imposed on you to protect the public interest by proceeding to prevent such persons from carrying on their occupations or trades. I am not talking about misrepresentation.

Mr. Wardell: Mr. Renwick, I have been employed by the association for some 12 years. To my recollection, we have never even written a letter to one who might be a technologist, a scientist or a physicist. We use our own good common sense and judgement.

Mr. Renwick: I can well understand that under the existing act, because the practice of professional engineering is more or less an itemization of function and area of expertise. Unless I am mistaken, under the present act there is no reference to the safeguarding of life, health, property or the public welfare--

Hon. Mr. McMurtry: That is correct. It is our view, Mr.

Renwick, that the present act is far broader than the act that is before the committee.

The experience that we have been hearing about is relevant, because it seems to me that a lot of people who have expressed concerns about being prosecuted should be more concerned about the present act--when I say the present act, I mean the old act, the act that is now in existence--than what we are proposing. My reading of it would indicate that the definition is much broader and a number of these people could well have been caught up in these investigations and prosecutions in the old act. But we are not--

Mr. Elston: Was not one of the reasons, as I understand it, that the definition was wide enough so that they could actually work under its auspices, or at least alongside that definition without intruding upon it, to--

Hon. Mr. McMurtry: No.

Mr. Fram: No.

Mr. Elston: There were exemptions. That is the effect.

Mr. Fram: For the scientist, there were exclusions, but for everyone else, including the technologists, there were no exclusions. In fact, any active technology--within the definition under the act that pertains today and not this bill--was the practice of professional engineering and could have been prosecuted.

Mr. Elston: The question is, why was it not prosecuted? That is the question. If you have an act--

Hon. Mr. McMurtry: Because it was a common sense interpretation of the act. Again, I think we all recognize that no draft achieves total perfection and, particularly in an area such as this, it is a particularly difficult challenge. So there really is no substitute for common sense in the interpretation of this legislation here.

Mr. Elston: I suppose maybe we should be dealing with allowing the common sense to continue if it has worked well. Obviously we are here for a reason. Why has common sense not done what the engineering--

Hon. Mr. McMurtry: You have to go back a step quite apart from this, and understand that this legislation and the companion legislation represents not only an historic but an incredibly important agreement which was reached, I believe, very much in the public interest by the engineers and the architects. That is very fundamental to this legislation.

Mr. Elston: But it left out an important part of our industry though. That agreement did, or will, exclude a good number of parts of the industry as it now exists, as I understand it.

Mr. Renwick: Perhaps, Mr. Elston, you could let me carry on.

Mr. Elston: I am sorry, Mr. Renwick.

Mr. Renwick: I am in great danger of losing my train of thought.

I think the point which the Attorney General has raised is where the hinge of the debate and the problem will be. The position, as you referred to it in your opening statement and again just now, is that these general words, "wherein the safeguarding of life, health, property, or the public welfare is concerned and that requires the application of engineering principles," are words of limitation rather than of extension.

I will certainly be interested in the clarification of that position, because the people who have been in touch with me about it have been expressing extreme concern about the meaning of that definition, because it relates not so much to admission, but relates to the monopoly power of exclusion which is being granted to the association. That is one of the major keys of what we will be engaged in during this next week and then again in March.

11:50 a.m.

If I can address the Attorney General, do I take it that it is not your present intention--I am not talking about what may happen during the course of the week--or you have no present intention of amending that definition, nor do you have any present intention of developing further exclusions from it, or is that a matter that is of major concern and is part of the discussions which you apparently had last night with a number of the professional bodies?

Mr. Fram: The only amendment contemplated at present to that definition in the Professional Engineers Act is a technical one. That is in the words, in clause 1(m), "composing of plans and specifications." Since "of plans and specifications" is the only object in there, the only contemplated amendment is taking out "of plans and specifications." There is some concern that may be used as a misplaced object and used to modify some of the other general terms, like "designing." That is the only situation.

We have, of course, contemplated the scientists issue, but no amendments have been developed. We believe that the definition as currently developed excludes everything that the scientists have expressed should be excluded from the practice of science. It was not our intention to put people into the act and then take them out. We tried to limit the definition of professional engineering so that they would not be mentioned.

Once you start putting exclusions in, you do not know what the exclusions mean. What do we mean by "a life or a natural scientist," for example? They become just palliative words because there is no real meaning to it. Once you start putting further meanings on those terms, you have created sublimensure of another kind which prevents other people from doing things in their backyards to advance the interests of mankind.

Mr. Renwick: I understand the drafting problems. I do not mean that I could either have drafted this bill or drafted anything else. I understand the intention that you are trying to accomplish.

I do think, however, that we are going to have to be satisfied that this is the appropriate way in which to proceed. Unless I am incorrect, the practice of medicine and the practice of law are not defined. Is that correct?

Mr. Fram: That is correct. The only definition of the practice of medicine is to add on that it includes surgery. Law is not defined. Indeed, at one point we considered with the Association of Professional Engineers of Ontario not having a definition of professional engineering.

The reason we did not proceed with that is the whole point evolves down to who can be prosecuted, and judges have a better idea of what both medicine is and law is than they do about what professional engineering is. The introductory words there and the words of limitation are to draw the judge's mind into the kind of activity that he should be concerned about. That is why we put a definition in it at all.

Mr. Renwick: Perhaps I could move on to my last area of concern. In this case I think perhaps Mr. Smith could help me. If there is any analogy, perhaps you could clarify it for me.

In my profession at the present time, with a great deal of difficulty and problems, a number of what are referred to as paralegal functions have been and are being performed by persons who are not members of the Law Society of Upper Canada and are not called to the bar or enrolled as solicitors.

I am thinking of law clerks. I am thinking of conveyancers. I am thinking of community legal workers, particularly in the field of legal aid with the legal clinics. The legal profession is at extreme difficulty in recognizing those specialist functions of technically unqualified persons in a way which will promote the public welfare. Some of the rules are certainly very restrictive and indeed, exclusionary, almost as if they are not prepared to recognize the development of paralegal organizations.

I got the impression from people who have talked with me that there are a number of para-engineering--if I can use that term--fields, occupations, trades, that have developed which are concerned about getting recognition for their particular specialties within the professional engineers. Perhaps Mr. Smith can tell me whether my analogy is an appropriate one.

Mr. Smith: Yes, Mr. Renwick. Obviously, you have recognized the difficulty of defining the interface between the professional and paraprofessional. It is an immense and probably impossible drafting task, although I would suggest that in any given factual situation, people who are trained in the art will be able to distinguish between the person who is practising law and the person who is not.

I think that the paraprofessionals we are talking about are the technicians and technologists. In meeting this problem the approach that has been used is first to recognize that they may have expertise in a particular area which would justify granting them licensure under our act; so there is scope for a technician or technologist to become licensed under the act to practise professional engineering in a limited area.

The second area is where the paraprofessional practises under the auspices of a professional engineer. What I mean by that is there is a professional engineer who is assuming responsibility for his actions. That is set out in subsection 12(3).

Third is a complete exemption. In the case of an employee in industry, he is permitted to practise professional engineering, as is stated, "in relation to machinery, equipment...tools and dies for use in the facilities of the person's employer," so that the skilled artisan who is engaged in the industry may engage in what might technically be constituted professional engineering in that limited area where it is in conjunction with his employer's facilities. That is the response to this problem area of the paraprofessional that is being devised under this act by those three mechanisms.

Mr. Renwick: Again this relates to my same concern. In my own profession before there were recognized paralegal (inaudible) such as law clerks, conveyancers and so on, and the question of supervision by a qualified professional, most of the cases of unauthorized practice were innocent or otherwise misrepresentations of holding out to the public.

Here you have groupings of persons who now belong to their own associations, practise in specialized or particular areas that are covered by the professions. It leads to the concern that the body, such as this body, which will be charged with the public interest, is, in some way, going to become more vigilant using the obligation which is imposed on them to either control or exclude groups that have become known as paraprofessionals.

In the development of this profession, your profession, and in particular in the development of the legal profession, that is a very serious problem--the extent to which the power of exclusion of paraprofessionals will be exercised.

12 noon

Mr. Smith: I am not sure I can really advance it any further, Mr. Renwick. It obviously is a judgement call as to whether any particular individual has strayed over the line between the licensed professional and that other activity.

Mr. Moull: Dr. Lapp, can you help Mr. Renwick?

Dr. Lapp: I am not sure I can be of great help. It is a fairly cut-and-dried situation. There is no way we can recognize paraprofessionals in the engineering sense without some kind of blanket system such as at one stage OACETT proposed, as an example.

The only way we have of dealing with it is through the entrance provisions of the profession. It is a biportal profession, really. One is where a person comes through the university system, and you have asked which university programs are approved by the association. The other port is through the examination process, and any person, including the paraprofessional, can enter the profession. There are no provisions in the old or the new act for relationships between a professional engineer and a paraprofessional. I do not think we use those words at all in the act.

I am not sure I am being very helpful here, but it just is not a matter that has been dealt with in the act per se.

Mr. Renwick: That was my sense, and I thought Mr. Wardell, with great respect, was expressing the traditional way in which the exclusion was carried out, very much the way the law society carried it out.

I can only raise the fact that it was of concern to me that there did not appear to be any clear road within the draft bill before us for the recognition of paraprofessionals. To cite an example in my own profession, there is a regulation kicking around now that simply excludes a community legal worker. "Community legal worker" is a recognized term for a paraprofessional working within the community clinic function. The law society finds it impossible to provide for that kind of function; yet there are probably at least 100 operating in the community clinics across the province. It is this failure to recognize the paraprofessional either by specific exclusion or by providing a method for affiliation that is one of the things that bothers me in the bill.

Mr. Moull: Mr. Wardell may be able to help you.

Mr. Wardell: Perhaps not, but I would like to suggest that in Ontario we have no standards to recognize that paraprofessional. In this bill we do not talk about the technologist, the technician; we talk about any person who has certain qualifications, to whom we will grant a limited licence. But there are no standards by which we can assess who is a paraprofessional, who has the training and experience to qualify by some other body to infringe on the practice of professional engineering.

Mr. Renwick: I have taken up too much time, but those were the major concerns I have had with the bill.

Mr. Chairman: We have created a bit of a problem. We have another group scheduled for this morning, and I have a number of further questioners. I would ask the questioners to be brief so we can get on to the other group, if possible. The problem is that, if we do not get to the other group, our scheduling is so tight that we may not be able to get to them, and I think that would be unfair. Since they are here, we should hear them.

Mr. Laughren: I will be very brief, Mr. Chairman. I noticed that subsection 2(2) states: "The head office of the

association shall be at the municipality of Metropolitan Toronto." This means we have to amend the act if a group of engineers decide that the association head office should be in Kingston in order to be closest to the best engineering school in Ontario. Whose idea was it that it would have to be in Toronto?

Mr. Moull: Do you want me to attempt to respond to that? Of course, this is the Attorney General's bill; it is not the APEO's bill.

Mr. Breithaupt: As many people believe that as believe in the Easter rabbit.

Mr. Laughren: Let us clarify this a bit.

Hon. Mr. McMurtry: Two of my sons are Queen's students, one a graduate. Maybe we had better change it.

Mr. Moull: Putting that comment aside, the headquarters of the association has always been in Toronto since the first act came into being in 1922, some 62 years ago. It has served very practical purposes being here over that period of time in that Toronto is the centre for a large segment of the industry and consulting firms and member organizations with which the association becomes involved and employers who employ engineers.

Of our membership of 50,000, it is probably fair to say somewhere between 20,000 and 25,000 of our members are in the area from Oakville to Oshawa, the so-called Metro area and its environs. For transportation purposes of either the public or members zeroing in on the association headquarters, Toronto seems to be the most logical focal point.

Mr. Laughren: I do not question that. It is true of every organization in the province. The only thing is I have never seen it enshrined as law that it must be in Toronto. I have only been around this place for 12 1/2 years so maybe I have missed a lot, but I find it weird you would have that in the act. I just wanted to serve notice that if any group of engineers within the profession wants to lobby to have that taken out of the act, they would have my support--and the Attorney General's, I suspect.

Mr. Moull: I have no further comment on that one.

Mr. Gillies: Mr. Chairman, I want to add my support to Mr. Laughren's suggestion. Fifty years from now when Brantford is the capital and commercial centre of the province, you may have to come back for amendment.

Hon. Mr. McMurtry: We had better not let that fellow from Brampton in here or this will get totally parochial.

Mr. Gillies: Absolutely. There is another reason for amendment.

Gentlemen, very briefly, because I know we have a time problem, I have three points. The first is to reinforce what Mr. Renwick said very well. I have a bit of a concern in terms of the

process that your organization is acting at one and the same time as the licensing body of professional engineers in the province and also, if you will, as the professional or interest group for your members.

I look at one of the recommendations of the Professional Organizations Committee, "In no case should a professional self-regulating body be recognized as a bargaining agent for employed professionals." I know in the strictest sense, in the literal sense, you are not, but in the broadest sense, a cynic may say that your organization, through its input on this legislation, is setting a term of employment for your members and setting a fairly broad degree of exclusivity for your profession. I know you have commented on that before, but I put it for your consideration.

Most of the concerns I have had expressed to me about the bill focus on section 12, following up on the definition of "engineering," and then under subsection 3, the three classes of exceptions. I have heard no particular problem with clause 3(a), the employees' exemption. Most of the other professional groups are concerned about clause (b), and you will hear enough about that, so I will not pursue it.

12:10 p.m.

My question is about clause 12(3)(c), that people may be exempted from the terms of the act by regulations. My question is whether at this stage of the game you have seen or considered any regulations to complement this bill. Following that, I might ask the Attorney General if the ministry anticipates at this point that it might ever create exemptions to the act by regulation. I would ask you first if you have seen any regulations.

Mr. Smith: At the present time there is no contemplation that this be acted upon. I think it is fair to say that none of us has anything in mind. It is my belief that it was intended as a safety valve. Situations do occur from time to time that, unfortunately, just fall outside the words of the act and the case cries out for relief. It is a provision like that that would enable us to accommodate someone who had a particular expertise who is serving the public interest and yet for some technical interpretation or reason had concerns that he was infringing upon this act. I believe it was to accommodate that sort of situation.

Hon. Mr. McMurtry: Yes, that is the understanding of it.

Mr. J. A. Taylor: I have a supplementary to the first part of Mr. Gillies' question which follows up from the initial question Mr. Renwick asked, or the statement he made; I am not quite sure sometimes. It deals with the response you made, Mr. Moull, in regard to the function of the Association of Professional Engineers of Ontario as being protectors of the public. I surmise that that is the philosophy behind the bill. Would I be correct in that supposition?

Mr. Moull: Yes.

Mr. J. A. Taylor: You indicated that there were three

areas where there might be, or be perceived to be, areas of activity that were to advance the interests of the individual members of the profession as opposed to the interests of the public. Those areas, you indicated, were insurance--I believe they were in sickness, accident, or life insurance--indirectly the area of registered retirement savings plans, and the third area, as I recollect, was an employment agency type of thing.

Mr. Moull: No, employment advisory.

Mr. J. A. Taylor: Employment advisory area. My question, following from Mr. Gillies' initial question in terms of clarifying the public interest as opposed to the interest of the membership, is, would it be the intention of the association to provide for an increase in the number of activities which would seem to serve the membership as opposed to the public? That is my question.

With that question, what is your response in terms of whether you feel that the legislation provides sufficient flexibility or potential to further expand those areas of activity which might seem to be activities serving the membership as opposed to the protection of the public?

Mr. Moull: There is no intention whatsoever. Very clearly we have discussed this among ourselves and with the Attorney General's department. There is absolutely no intention whatsoever of us increasing any of the so-called service activities beyond those modest so-called services that we are providing now and have been for some long time.

Mr. J. A. Taylor: I gather it is your intention to preserve those areas of activity. I think you indicated that in one case no one else wanted to carry it on. I think you referred to the insurance, or the registered retirement savings area.

Mr. Moull: There are probably two areas there. The registered retirement savings plan is seen to be locked in. We do very little, it costs us very little and we would just as soon be out of it. We are not in the insurance anyway. That is carried on by the national body. We are not really a participant in that at all, other than our members. A great many of our members, as a matter of fact, take part in those insurance programs, but not by APEO.

Mr. J. A. Taylor: Is it your understanding of the legislation that it would provide for an enhancement of those activities?

Mr. Moull: No. My understanding of the legislation is it would not provide for an enhancement of services by the association.

Mr. J. A. Taylor: You would not have any objection to ensuring that it excluded the growth of that type of service.

Mr. Moull: No.

Mr. Chairman: Mr. Gillies, do you have anything further?

Mr. Gillies: Yes, Mr. Chairman. Gentlemen, as we talk about this bill, I have done a bit of background reading on the subject and I am sure some of you would be familiar with the royal commission report done for the government of Great Britain, headed by Sir Monty Finniston. I would like to read three short quotes from that report and elicit your response.

One is, "While the linking of registration with licensing has arguably produced benefits for engineers in some countries"--and it mentions the United States and Canada--"we were not persuaded that it had contributed to any material extent towards improved engineering practice."

It goes on to say, "Attempts to draw lines around functions within the engineering dimension and to prescribe who should be allowed responsibility within them would ossify and compartmentalize even further the working relationships which we have argued should be opened up and made as flexible as possible."

Finally, by way of a recommendation, it said, "We are thus on the whole dubious of the desirability and sceptical of the practicability of any system of generalized licensing of engineering practice in Britain and would recommend against any such regime."

Obviously, your organization does not subscribe to these views. I would ask you to comment on them.

Mr. Moull: I will ask Mr. Cagney to comment.

Mr. Cagney: Mr. Gillies, I attended those meetings.

Hon. Mr. McMurtry: Always have a good Irishman respond to the British.

Mr. Cagney: I think it is fair to say, having participated to some degree, that the report which finished in the committee was not endorsed by Finniston himself.

We made the point over there quite clearly when we were invited to speak on behalf of licensure regimes. We said quite clearly that there is no evidence anywhere that better engineering is done under a licensure scheme or any other scheme. Engineering is engineering. It has simply been a traditional way of operating in all the provinces of Canada and it has served the public very well.

As to the second point that it would create difficulties within--I think compartmentalization was the word you quoted. Again, they have operated in the United Kingdom for 10 these centuries without any such licensure schemes except in very narrow areas such as, I believe, in the mining area, dredging and one or two others where public safety is involved. They have a series of levels of engineering over there which have rather different terminology than we use here. They have no consistent assessment system in the UK. They have a Council of Engineering Institutions

which provides charter engineer or engineering memberships in one or the other of these institutions. There are the civils, mechanicals, chemicals and so on and their standards vary all over the map.

They have sought worldwide memberships in these institutions, and now to turn around and try to do a licensure scheme under some standards set, in this case, by the government--I believe it is now called the Engineering Registration Board--would be an improbability they were not prepared to face.

Nevertheless, many institutions over there individually still would like to favour a registration system and a licensure system.

I think we have worked very well in this country in the sense that our acts, even though they are licensure acts, made it quite possible and, indeed, practical for engineering employers to deploy their engineering or technical manpower any way they see fit, provided the responsibility for the engineering work that is done is taken by a professional engineer.

12:20 p.m.

This new bill, in my opinion, will open the practice of engineering in Ontario far broader than it is possible to do elsewhere in Canada under any other statute I am familiar with. I do not think there are any inhibitions which they feel in England. There are very large areas of unionized engineers in England, of course. Their strength lies in their unions rather than their associations.

Mr. Gillies: I want to stress that I am no way being critical of the practice of engineering in the province, which I think is unquestionably of the very highest order. We are just talking process and organization.

As a final point, do you know offhand whether the greater number of western industrialized countries or jurisdictions would have a licensing system for engineering or not?

Mr. Cagney: No, they do not.

Mr. Gillies: Would your organization be able to provide that information for the committee? Would it be possible?

Mr. Cagney: I am not sure we can provide you with the ones who have not, but we can give you a list of the ones who have.

Mr. Breithaupt: Mr. Chairman, during the past three years I have been the responsible person in our caucus to try to be the recipient of various items concerning the report of the Professional Organizations Committee. Over these years I have gathered that there have been three particular themes.

First, in dealing with the law society and the Notaries Act, there were not as many items of general public interest and concern in what the report suggested.

Second, the problems between the chartered accountants and the certified general accountants and others were so difficult that we are not likely to see legislation based on this committee report for some time.

The third area was that dealing with the architects and engineers. The way I saw the report and the development of legislation was that basically these two professions were sorting out between themselves on the dotted line who could do what to whom and not be under some burden from the other side. The architects and engineers have now brought forward these two professional statutes under the responsibility of the Attorney General, but more likely as a result of what they have agreed on.

It is clear from the number of persons who want to appear before us that some of the things that have been agreed to are not sufficiently clear from their point of view. As the Attorney General in his opening comments said this morning--and he may correct me if the quotation is not entirely accurate--this statute was going to be bringing full control of engineering in the province under your aegis.

It is a professional statute, even though the Attorney General is the responsible person to bring it before us, but basically it is a statute, along with the Architects Act, that is going to be in place probably for 10 or 20 years and is going to set the operations of your two professions, yours and that of architecture, for the next generation.

The reason we have so many groups wishing to appear before us, and there are now about four pages of them, is that there are two particular concerns. The first deals with the exclusions and the general fear of many of the other organizations that the control by your association of the thing called engineering is going in some way to hedge them about, make what they do difficult--whether they are technologists, physicists or whomever--make them in some way compromised by having to have their work approved by a person who is an engineer where they might not be, or in some way it is going to be a disqualification for them in employment or other opportunities if a person has to be an engineer to do a certain task, or that is what the employer hopes to have hired, an engineer, compared with someone else who might do that job equally as well, depending on his peculiar or particular qualifications.

The reason we have so many groups before us, or behind you, is that they are concerned about this matter of definition, of exclusion, of their right to do whatever it is they do without any control or supervision by somebody who happens to be an engineer or by your association. I would think in the presentation and in the answers you will want to make to the various groups that are going to be appearing before us, this is going to be one theme that has to be particularly addressed. As can be seen in the

questioning that has gone on this morning, it is a theme which committee members from all three parties have been concerned about.

The other theme I see from this legislation is the matter of how one deals with employed persons. There are obviously many engineers working for Ontario Hydro, many who are involved with municipalities and the provincial government. The question also comes forward of responsibility for them as opposed to the responsibility of their employer for certain things they might do. Should the exemption for an employed person whose employer otherwise is able to be responsible for an act or omission of that person exempt him from the requirement of having to be a member of your association?

I think when we look at the development of this legislation, the expectation was that it would more or less sort out the differences and the concerns between you and the architects. But it has gone somewhat further, much to the concern of many of these other organizations. I believe it will be necessary for you to make clear to the committee what your views are on the concerns these other groups will have.

You will have that opportunity while other presentations are made. However it is my opinion, as I look down the list of the variety of persons who wish to come before us, that it is a common concern of nearly all of them as to whether or not they are going to be involved.

They are concerned that they must be involved and are going to have to be second-guessed by someone who has a different qualification. They will be concerned just how this is going to impinge upon their desire to become perhaps separately a certifying kind of organization. Nearly every variety of professional organization now seeks to have some developing control over the future of its own work, be it landscape architects, physicists or whatever.

Perhaps you might just respond. I realize we are taking most of the morning dealing only with this presentation, but on the other hand it is the statute which this organization is most particularly involved in and I believe we must take the necessary time thoroughly to share our feelings with them so that they can respond. Indeed, satisfying their views may well shorten many of the other presentations.

Mr. Moull: I think I will ask Mr. Smith first.

Mr. Smith: Mr. Breithaupt, I think your first point is quite correct, that the genesis of this act was the long-standing jurisdictional dispute between the architects and the engineers which culminated in the 1979 agreement approved by the Professional Organizations Committee.

Setting that aside, from the standpoint of the engineering profession, we frankly did not perceive any pressing need for any change to the act other than to accommodate that agreement. There certainly was no wish on the part of the engineering profession to

expand the scope of its jurisdiction. Contrary to that, I think we recognized, having worked with the act over a number of years, that there were areas where it could be improved and certainly one of them was in the definition.

12:30 p.m.

It is my view that the existing definition in the old act is much broader than the one being put forward at this time. I think it was to the association's credit that over the period of time there has never been any frivolous or vexatious prosecutions of persons who might for one reason or another have strayed within the definition of professional engineering.

I think there was a soft spot in the existing act where it was not clear that a technician or any other person could carry out engineering practice under--I will use the term "supervision," but the way it is stated in the act is, where there is an engineer who will take responsibility for the work.

12:30 p.m.

We think that is an improvement and makes it clear, for example, in a consulting practice that technicians could be employed provided there is an engineer who will assume the responsibility for the work of the technician. Other than that, I would say we regard all these as improvements and certainly not as extensions.

Just getting back to the definition again, I would say the proposed definition is much tighter and much more restrictive. It was on that basis we felt exclusion of the various groups that are now in the act, such as operating engineers, natural scientists and physicists was not necessary.

Mr. Breithaupt: Could you also speak to the employed group, say, the responsibility of a person in Ontario Hydro necessarily to be a member and continue occupational duties when the ultimate responsibility for them would be that of his or her employer?

Mr. Smith: I think what you are referring to is what is being called the industrial exemption provision.

Mr. Breithaupt: Yes. That would perhaps be a broader view of the same predicament.

Mr. Moull: I will get Dr. Lapp to comment.

Dr. Lapp: If I may, I would like to go back for a moment because it is covered in what I am going to refer to. There was an agreement reached in Steve Fram's presence with the physicists, technologists and technicians. It is a 13-item agreement and I would like to read two or three of them because they do relate to the concern you are expressing.

Mr. Breithaupt: Perhaps we could have that agreement available to the members of the committee, Mr. Chairman? It might be a help because, again, many of the things we may ask you have already been attended to, except that if we do not know about agreements and such like, we go on blithely as we always have.

Dr. Lapp: I think this particular agreement is worth quoting. Perhaps I will read the last item first because it does relate to this question of employment.

"It is agreed that attempts would be made to develop an exemption or exemptions designed to permit employers freedom to use technical personnel in the most appropriate manner provided that the public is protected by the preparation or approval of procedures and criteria by professional engineers."

Mr. Breithaupt: When was that agreement reached?

Dr. Lapp: July 20, 1982, so it is a year and a half.

That particular point addresses this question of the employer and his relationship to his employees, the fact that an engineer is going to take responsibility for work being done which is the act of professional engineering as laid out in the act as it is now.

There are two or three other concerns however that this addresses. I am working my way from the back to the front.

Provision 6: "A limited licensure mechanism should be set out in the act," and of course that has been done. That was in response to a concern by the technologists about situations where the technologist really is quite capable of undertaking engineering activities and being responsible for them. So that provision was put in the act as a result of that.

Incidentally, we also had in there, "Nothing in the act prevents any natural scientist from practising his profession." It came out differently when the act was drafted. It was thought the definition excludes the natural scientists and therefore there was no need to include them back in as an exemption as Mr. Fram mentioned earlier. I am sure there are varying points of view there.

Another one: "Arriving at the product, process or service may involve the activity of more than one professional group. The section should be written so that there is no inference that the professional engineer is cast in the role of having to supervise the work of other persons." I think that has been reflected in the act as well.

I am not sure if I have taken a more omnibus approach to your question. I was really trying to deal with the other groups that we have contacted. We had a session with Mr. Fram that resulted in this agreement that took place a year and a half ago. I think it might be useful to this committee to have it.

Mr. Breithaupt: I appreciate the comments. It would indeed be useful to have that agreement. Perhaps I could ask Mr. Fram if there are any other agreements or items of understanding that have been reached to sort out of some of these concerns that might, if they were available, be of help to the committee. It may save us some time and accommodate the other witnesses who do not have to make comments on things we perhaps will have learned already.

Mr. Fram: In terms of an agreement, that essentially is the only agreement that was arrived at in that way, where all the parties were present. Numerous accommodations were made in the process of developing both the Architects Act and the Professional Engineers Act. For example, the Housing and Urban Development Association of Canada and general contractors all had input in various ways, but that did not come out in document form except as it appears in the act. Those accommodations found a different route, but that was the only type of document that pertains to an actual process.

Mr. Breithaupt: Thank you.

Mr. Chairman: Mr. Breithaupt, we are getting the subject matter photostated and the committee will have it shortly. We are past our usual adjournment time. Mr. Elston, do you wish to continue?

Mr. Elston: I have a couple of questions. I would like to know if there is some document, relatively brief or otherwise, that would tell us exactly what engineering principles are and their application. I am still a little mystified by how that actually works. If I could get my hands on something, I can look at and read in my spare time at 12:30 or whatever time we adjourn this evening. I would not mind taking a look at it, if you have one that is recommended. I could decipher in my own mind what the principles are.

Dr. Lapp: I tried earlier to describe the process of the formation of an engineer. Those processes are established, almost enshrined, in the criteria for accrediting the engineering programs that were asked for by Mr. Renwick. The easiest thing for us to do is to provide you with the Canadian Accreditation Board manual, which establishes these principles quite crisply and sets out proportions of the various components of engineering practice in an engineering curriculum. We will endeavour to get this document to the committee at the earliest possible time.

Mr. Elston: That would be quite helpful.

Mr. Moull: It is reasonably succinct. You do not have to read it for three or four hours.

Mr. Elston: The example I think of in my own mind, and I may be wrong in using this, is the situation of the medical centre for athletic injuries in northern Ontario where there has been a good deal of work done by two internationally well-known doctors in constructing a brace for the knees of some celebrated athletes.

I presume the construction, or at least the setting together of all the information needed to design that brace, would not fall within the ambit of this legislation, but actually putting pieces together to form the brace would be covered by it and technically would require licensing of a person to put it into a drawing form or even to construct it. Nobody wants to answer.

Mr. Moull: Mr. Wardell?

Mr. Elston: Do you believe that might be an application of an engineering principle?

Mr. Wardell: I think we could run around in circles. You may or may not know that under our present legislation we do have a program where we designate specialists. We have a number of what are known as biomedical engineers who are indeed practising as in your example. They have applied for and have been designated specialists in our program. They are engineers. Under the circumstances, I do not think we would want to take them to court for practising engineering.

Mr. Elston: But they could be unless they applied for a licence or what would be a limited licence now, I presume, under this new regime?

12:40 p.m.

Mr. Wardell: No. We would not under the old act and I do not anticipate that under the new legislation there will be any difference.

Mr. Elston: But I presume their qualification really would come under the limited licence aspect of this bill?

Mr. Wardell: If they wanted to apply for limited licence. Our concern in the past--and I do not see it changing in the future with this new legislation--has been public safety. If a doctor, a medical person, developed a piece of equipment that needed wiring and electronics in order to make it function and, in handling that piece of equipment, public safety was a factor, then, yes, that would become engineering, but with the actual mechanics of an arm or something like that, I think it would not.

Mr. Elston: That is the second part of that. If we get into the public safety argument, which is really the one which you have put before us most often, can you point out any individual incident where there has been a major impact on public safety by someone who was not a member of the association? I presume that out of those 15 cases you spoke of earlier, there must be--

Mr. Wardell: I can give you a number of examples. Recently, we had a chap who came from the United States claiming to be registered as a professional engineer in the state of New York and the state of Ohio. He set up a business dealing with the Canadian Standards Association where he was acting as a client's agent to get equipment approved by the CSA. It turned out that this man was not a professional engineer; he was not registered in

the state of New York; he was not registered in the state of Ohio; and he was certainly a hazard to the public here.

Mr. Elston: He presumably was dealt with effectively under the existing legislation.

Mr. Wardell: Yes, and he would be under this.

Mr. Elston: His situation would not be one of those new areas where the legislation would have an impact.

Mr. Wardell: I do not anticipate any difference between the old or the new legislation in regard to this matter of the enforcement of the act. As Mr. Smith said, we did not ask for it. The development of the legislation in front of you was a jurisdictional dispute between architects and engineers.

Mr. Elston: Maybe what I should do is get to the heart of the problem. No one has mentioned these people by name, to this point, and they are the people involved in industrial design and interior design who say that as a result of this legislation they will be put out of business. Are you telling us that is not the case?

Mr. Wardell: Absolutely.

Mr. Elston: That they need not worry whatsoever and that they will be able to carry on their current functions without any restriction at all under this new legislation?

Mr. T. P. Reid: Perhaps we could ask Mr. Fram.

Mr. Chairman: I wanted to suggest that Mr. Fram is waiting here with some sort of explanation.

Mr. Fram: We have to bear in mind that in most instances, and I cannot think of an exception, the new definition is far narrower. It is a definition building into it limitations, rather than extensions from the existing act. In other words, the areas that may be prosecuted and the words "that may be prosecuted" have to be stressed because there is probably nothing done by man that could not have been prosecuted under the existing Professional Engineers Act.

Technologists could have been prosecuted for practising professional engineering under the existing act. They can be today. Industrial designers can be prosecuted for practising professional engineering under the existing act. Under the proposed act, the bill before you, that is far less possible.

Mr. Elston: But not excluded.

Mr. Fram: No. There are three tests involved in the new definition. The first test is a general question of whether the act is designing, whether the act is reporting, etc. That is not really valuable as a limitation. But the second one--that is, whether concerns are raised about safeguarding life, health,

property or the public welfare--is not a test under the existing act; it is a test under the bill before you, and that test is what excludes.

Indeed, industrial designers do design and they do employ engineering principles, but as I have talked to the industrial designers, where there is a risk, a concern about public health and safety, that is the point where either there is work with an engineer or there is a collaborative effort. That is the way products are designed and, under this bill, it will mean that no prosecution can result.

Mr. Elston: But until they get to the stage where there is collaboration, technically they are operating outside this--

Mr. Fram: No, because, if you look at the definition--and perhaps it should be set out in stages--if the act itself that is complained of does not give rise to a concern, it is not professional engineering. People can sketch, they can draw, they can design packages, but as long as there is no health concern out of the act they have done--and that includes technologists--as long as the technologist and the testing or whatever designing work he is doing does not give rise to a concern about health and life, then it is not professional engineering.

Mr. Elston: There must still be some difference of opinion then with respect to how it is going to operate, because the material that has been given to me and presented to us indicates a very strong concern about this and, in particular, with respect to those people who design layouts for shopping centres or whatever.

Mr. Fram: There are other issues related to shopping centres. If we are talking about industrial design of products, there are concerns about its relationship with the Architects Act primarily. I think the concerns in relation to the Professional Engineers Act are far less.

Mr. Elston: Okay, but let us take an example of where a product design or a container design has caused some concern, and that would be the exploding bottles for the soft drink industry. I presume the person who designed that, if he was not working under the auspices of an engineer, would be in breach of this.

Mr. Fram: He would be liable for it in law whether he was or was not or whether he was an engineer or not.

Mr. Breithaupt: Except that he might also have an engineering charge, shall we say, brought against him for doing those things that he was not technically allowed to do.

Mr. Elston: Under the act. I am just trying to grasp the situation where somebody designing a product container is not going to get into the bounds of public welfare, health or something like that, who would be able to get inside the definition as you have put it to us in the three stages. It would

almost seem to me that anybody who is dealing with container design is going to get into that automatically and would then have to go to an engineer to sponsor it.

Mr. Fram: Indeed, very few products are released that do not have the involvement of professional engineers.

Mr. Elston: Let us go to another part of the presentation, which deals with the Alberta experience with respect to legislation. That Alberta experience, as I understand it, has caused some concern for the people in those two areas I spoke about earlier.

I understand there was some problem out there in existing as a nonprofessional engineer for people engaged in industrial design. Perhaps you would like to comment on your view of the Alberta legislation and how it might compare with this legislation here.

Mr. Moull: I am not sure we have knowledge of exactly what you are speaking about with regard to industrial design as it applies in Alberta.

12:50 p.m.

Mr. Elston: As I understood it, the legislation was not all that much different from this legislation. You pointed out some differences earlier. Maybe a couple of you did. You suggested in that situation everything seemed to be working well with one exception, and then you named how you narrowed your definition somewhat. It was the opinion of people who have spoken to me that the Alberta experience was not good for them as nonprofessional engineers. I would like to be assured again that those nonprofessional people are not going to be hurt in Ontario the same way they perceive their fellows from Alberta were injured.

Mr. Moull: I am not so sure we have a clear grasp of the question even yet, but possibly Mr. Smith might attempt to comment.

Mr. Elston: Basically, the indication to me was that the Alberta legislation excluded their operations in business.

Mr. Moull: Their being who?

Mr. Elston: I suppose paraprofessionals would be the best way to describe them.

Mr. Moull: Technologists.

Mr. Elston: Technologists.

Mr. Smith: I do not think I can advance the matter. My reference to the Alberta legislation was purely looking at a definition on paper, as compared to ours. We felt--

Mr. Elston: You have not looked at the experience there.

Mr. Smith: I do not have any personal knowledge of their experience.

Mr. Fram: Our definition is quite different now from the Alberta definition, about which there have been many concerns. The Alberta definition formed the basis of our discussion draft which received the sound expression of concerns by everyone. That caused the revision you see before you. We based our discussion draft on the Alberta legislation, and that is quite different from the draft you see before you now.

Mr. MacQuarrie: I wanted to follow up briefly on the line commenced by Mr. Elston dealing with the industrial designers, environmental planners--call them what you will--the people who are involved in space layout, possibly alterations. If I understood you correctly, Mr. Fram, if an interior designer who came in, drew plans, specifications, etc., for a layout within a given square footage or meterage or whatever it might be, showing partitions here, there and everywhere, dividing existing space, supervising the construction and the erection of that, would he not be practising engineering?

Mr. Fram: As long as it had nothing to do with the strength or safety of the building, he would not be practising professional engineering. He may be practising architecture.

Mr. MacQuarrie: All right. Assuming there were alterations, as I understood from representations made to me, with the situation that currently exists under legislation, they would recommend the removal of a wall or some such thing in the course of their design layout. In cases where there was any possibility of structural effect, they would get the approval of or would consult an engineer. There was a certain amount of collaboration at that point, but they would still continue to supervise the actual site layout. Would that situation still continue under the new act?

Mr. Fram: Assuming the design of the structural, mechanical or electrical system were done by a professional engineer, there would be nothing in this act that would prevent them from doing what they have done. There is a sub-issue on getting somebody's stamp on a drawing he has not done himself or, similarly, getting a lawyer to sign a document as his document that he has not reviewed and has never given consideration to. Assuming that--

Mr. Breithaupt: How could that happen?

Interjection.

Mr. J. A. Taylor: Check your insurance policy.

Mr. Fram: That is right, and send in a copy of your letter to the insurer when you do that.

Mr. J. A. Taylor: There are five of us here, Mr. Chairman, and surely that never happened in our experience.

Mr. Fram: Assuming that the structural or safety aspect of the design was approved by a professional engineer, and there is no offence under this act, as I understand it--

Mr. MacQuarrie: You have raised the possibility there might be an offence under the Architects Act.

Mr. Fram: That is right. We will dealing with that issue.

Mr. MacQuarrie: Yes. It is a comparatively new occupation, trade or calling, paraprofessional, as Mr. Renwick called it earlier. There are schools in the province giving courses in it, Carleton University, Ryerson and others. These people feel their livelihoods are in jeopardy.

Mr. Fram: The jeopardy does not come from this act.

Mr. MacQuarrie: All right. It is the other act.

Mr. Breithaupt: Might I ask, Mr. Chairman, if you would assign an exhibit number to this agreement we have before us and tell us what the exhibit number is?

Clerk of the Committee: I cannot tell. The list is in the office.

Mr. Chairman: Thank you very much, Mr. Moull and your colleagues, for being here with us the whole morning. We appreciate your attendance.

The committee recessed at 12:56 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT

BILL 123, PROFESSIONAL ENGINEERS ACT

TUESDAY, JANUARY 31, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
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Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

Witnesses:

From the Canadian Association of Physicists:

Carswell, Dr. A., Vice-President-elect; President, Optech Inc.
Stoicheff, Dr. B. P., President

From the Federation of Engineering and Scientific Associations:

Bailey, C. M., Member, Board of Directors
Shalaby, A., Vice-President

From the Canadian Society For Professional Engineers:

Aktar, A., Member, Board of Directors
McNeice, Dr. G., President

From the Consulting Engineers of Ontario, Hamilton Chapter:

Disher, J. W., Chairman
Schneider, G. W., Vice-Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 31, 1984

The committee resumed at 2:02 p.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT
(continued)

Resuming consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

Mr. Chairman: I see a quorum. The second witness will be the Canadian Association of Physicists: B. P. Stoicheff, president, Raymond Hoff and Alan Carswell. Dr. Stoicheff, would you please introduce your colleagues? Then you may proceed with your presentation.

CANADIAN ASSOCIATION OF PHYSICISTS

Dr. Stoicheff: Dr. Raymond Hoff of Environment Canada is on my right. On my left is Professor Alan Carswell, professor of physics at York University and president of Optech Inc.; he is a professional engineer. I have also asked Mr. Brian Flood, whom we have consulted about this legislation, to join us.

Mr. Chairman and members of the standing committee on administration of justice, as president of the Canadian Association of Physicists I am honoured to present our brief on Bill 123. A committee of the Canadian Association of Physicists has for many years been studying the attempts at a new engineers act and its possible effects on our membership and on natural scientists.

Our members are physicists. They are most easily characterized as having obtained a university education with a degree of bachelor of arts or bachelor of science, and many have graduate degrees of master of arts, master of science or doctor of philosophy. They are employed in industry, government and university. Some are consultants and others have their own firms.

While our brief addresses the concerns of physicists, all of those concerns may equally well affect natural scientists. By natural scientists we mean the list of scientists included in the federal agency, the Natural Sciences and Engineering Research Council. This includes biologists, chemists, geologists, astronomers, space scientists, physicists, computer scientists, pure and applied mathematicians and statisticians.

At the outset I would like to emphasize that there has been no significant difficulty between scientists and professional engineers, none between the associations or in the work place, where they often work together on products, services and processes

that are important to our society. This co-operation and harmony between professional engineers and scientists has not, to the best of our knowledge, resulted in risk or harm to the public; and, in fact, no examples of this kind were raised this morning during the questioning of our colleagues in the Association of Professional Engineers of Ontario.

Our objective in this submission is to convince the committee that this harmony should not be jeopardized in the new legislation and, moreover, that the Legislature should not attempt to protect the public against something where there is no evidence that protection is necessary or advisable.

This morning we learned that the purpose and only goal of Bills 122 and 123 was to confirm the agreement between the architects and the professional engineers. The concern of CAP and its members is that while these bills may help to clarify in the public interest the difference between the scope of practice of professional engineers and that of architects, Bill 123 does not differentiate between the scope of practice of professional engineers and the scope of practice of natural scientists, a body that is overwhelmingly more numerous than the architects and almost as numerous as the engineering profession.

The possible effect of Bill 123, if enacted, on the right of the members of CAP and other natural scientists free to carry out their occupations in Ontario is alarming. There is serious risk that, without a professional engineering licence or without operating under the supervision of a licensed professional engineer, physicists and other natural scientists would be prevented from doing many of the things they now do under existing legislation without a licence and without supervision. We believe this is not in the best interests of scientists or in the best interests of Ontario.

CAP has previously expressed to the Ministry of the Attorney General the importance of differentiating between scientists and professional engineers in new professional engineering legislation. We believe the minister attempted to address these concerns in the definition of "practice of professional engineering" in Bill 123. Mr. McMurtry explained the intent of the definition in the following manner. The new definition should help to relieve the concerns of many in the scientific community by making a clear dividing line between the work of scientists and that of professional engineers.

CAP recognizes this intent and agrees with these objectives. After a careful study of Bill 123, however, our committee of officers and members of the association who practise physics in industry, government institutions and universities has concluded that the definition in Bill 123 does not establish the stated objective. This conclusion is supported by the Toronto law firm of Tory, Tory, DesLauriers and Binnington, which we have consulted on this matter.

We recognize the difficulty that the draftsmen of Bill 123 have had with an appropriate definition of "practice of

professional engineering," and this was amply brought out this morning during questioning. They have attempted to describe the activities of an engineer and then to limit to areas of public safety the situations in which performing these activities requires licensing.

We believe strongly that the results of these attempts create serious risk to scientific freedom. Our association has considered several alternatives to satisfy our concerns and those being addressed by the draftsmen by more precisely defining "practice of professional engineering," but we have now concluded that this is the wrong approach.

The differences between the activities of a professional engineer and those of a natural scientist are too imprecise, too subtle and too vague to deal with in a definition. Simply stated, the proposed definition of "practice of professional engineering" set out in clause 1(m) of the bill is so broad as to include many of the activities regularly carried on by natural scientists. Specifically, "any act of designing, composing of plans and specifications, evaluating, advising, reporting, directing or supervising" is as much a daily task of the natural scientist as it is of the professional engineer.

2:10 p.m.

It is difficult to envisage a situation where in performing any of these acts the scientist will not have a concern for the safeguarding of life, health, property or the public welfare. This morning Mr. Fram stated that this is the one place where one can distinguish between the practice of professional engineering and the practice of science. In his area of expertise, the scientist is by far better qualified to deal with the safety of the public.

Finally, the application of engineering principles cannot ordinarily be distinguished from scientific principles since they both are based on the same scientific laws. We had some examples this morning; for example, the law of gravity with which architects and engineers are concerned.

This morning one was concerned about who had the responsibility for a wall or a building not falling down. We let the architects and professional engineers sort that one out. How do you sort out whose responsibility it is, using that same law of gravity, to set up a space station or the shuttle or the Canadarm? Is it the responsibility of the professional engineer or of the scientist?

It is no accident that the interests, concerns and activities of the natural scientist and professional engineer are so intimately intertwined. The preparation, education and training at secondary school and university levels of scientists and engineers are very similar.

In Ontario and across Canada, many universities instituted programs of engineering physics in the 1930s which today continue to be among the most popular and most prestigious engineering programs. Some are the responsibilities of engineering faculties

but most are managed by departments of physics in faculties of arts and science. These programs are generally accredited by APEO and form the academic basis for acceptance of graduates as professional engineers.

Here I would like to give you my personal qualifications for making these statements. I am a graduate of an engineering physics program at the University of Toronto. I became a professor of physics in 1964 at the University of Toronto and in 1972 I was invited by the dean of applied science and engineering at that university to be chairman of the program of engineering science. For four years, I was chairman of that program, having as my responsibility the education of 400 students who were later accredited engineers.

In the work place also, scientists and professional engineers may bring different skills to bear, but the differences are very subtle. Thus, in industry, it is not surprising to find natural scientists and professional engineers working together on projects and problems, and performing identical job functions in doing so.

Moreover, one finds natural scientists supervising and managing large groups of scientists and professional engineers in all phases of industrial activity. This is particularly evident today in Ontario's hi-tech industries, where the technologies of aerospace, energy, communications, microelectronics, lasers, biotechnology and robotics are used.

To be sure, often scientists are more involved at the initial stages of research and development and professional engineers more often with the development of the final product. However, the efforts of both professions result in products, services and processes that are important to society.

In keeping with this long tradition of professional co-operation, natural scientists as well as professional engineers must be free to assume full responsibility for all aspects of a project falling within the area of their technical qualifications. Only in this way will we achieve the general principles stated by Mr. McMurtry that, "every person should be free to utilize his or her abilities, education, training and experience in earning a livelihood," to which we would add "and free to use his or her skills and competence for the economic wellbeing of the province of Ontario and of Canada."

From this discussion of our concerns and our views of the problem, we see that in the public interest scientists should be permitted to practise their profession freely. Scientists must not be required to perform these tasks only under the supervision of a professional engineer. Scientists should not be blocked from performing their tasks by an unsubstantiated claim that a licence is required.

CAP believes that the realistic solution is to incorporate in Bill 123 specific assurance that a natural scientist may practise as a natural scientist without being licensed as a professional engineer and without the necessity of being

supervised by a professional engineer. This is consistent with prior legislation and, to the best of our knowledge, it has worked. Moreover, as we heard this morning--and I believe it was the additional item 1 that was referred to this morning--our colleagues the professional engineers do not disagree with this position.

Recall that there have been exemptions in previous acts. The exemption in the Professional Engineers Act of 1968-69 says: "2. Nothing in this act prevents...any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist." I emphasize that it has worked in the past.

Our recommendations: While there may be various ways of giving the assurance we have asked for, we suggest two alternative ways. The one that is by far the cleanest, which we state as recommendation 1, is add to the definition of "practice of professional engineering" as it appears in Bill 123 "but does not include practising as a natural scientist."

Alternatively, recommendation 2 is to add a new subsection to section 12 of Bill 123 stating: "Subsections 1 and 2 do not apply to a person practising as a natural scientist." Then to ensure that a person practising as a natural scientist whose activities may otherwise fall within the definition of "practice of professional engineering" need not be supervised by a professional engineer, subsection 17(1) of Bill 123 should read: "It is a condition of every certificate of authorization that the holder of the certificate shall provide services requiring such certificate"--"requiring such certificate" are the three words that are changed--"only under the personal supervision and direction of a member of the association or the holder of a temporary licence."

Hon. Mr. McMurtry: It might be helpful if I were to make a comment at this time. I apologize, first of all, for not being here for the beginning of your presentation, but certainly I do not have any difficulty with anything you have said during my presence. Indeed, we have tried to abide by the principles you have laid down in the legislation, as you know.

We think we can accept your recommendation 1; we do not think we have any difficulty with it. We had really hoped it would not be necessary, but obviously some very wise people think it is. I do not think we have any difficulty at all with it; my information is that our friends and colleagues in the Association of Professional Engineers of Ontario are of a similar view. So if accepting recommendation 1 is agreeable to the committee, the ministry will support it.

Dr. Stoicheff: Thank you very much, sir.

2:20 p.m.

Mr. Mitchell: Mr. Chairman, I was prepared to enter into some discussion about this matter, having been somewhat involved in a way in my previous occupations in the area the doctor is

talking about, but the Attorney General having made the commitment, my thunder has been stolen, so I will pass.

Mr. T. P. Reid: We will now all try to take credit for this.

Mr. Mitchell: Speak for yourself, Pat. I just gave credit to the Attorney General.

Mr. T. P. Reid: May I ask a question of the doctor? I cannot stand all this sweetness and light. Who is to protect the public from you people if you do not come under this bill?

Dr. Stoicheff: That is a very good question.

Dr. Hoff: When we had the meeting in July 1980, our intention was not to make it so that a scientist would be absolved of any risk to the public. In fact, we do agree that in certain areas where there is a demonstrable risk to the public there has to be some sort of regulation or licensing. That is one thing we agreed to at the July 1980 meeting. However, in a large majority of the cases where scientists are working in industry, there is no specific risk to the public, or if there is a possibility of interpretation of that, there is some confusion over what are engineering principles and that is the problem we had with the definition in the act.

Mr. T. P. Reid: We had that problem this morning and I think we are still confused. I will not prolong this. Somebody in your field, a doctor--and you have quite an impressive bibliography; you would make a good Liberal candidate--

Interjection: It is the grey hair.

Mr. T. P. Reid: I do not think you would want to ruin your reputation by running for politics.

Presumably, a great many people in your field are--I will not use the term "moonlighting"--consulting to industry and individuals and other organizations. My friend here has indicated you feel there should be some kind of licensing or liability requirement. Is there any such now? What exactly are you contemplating in that regard? For instance, do you get liability insurance, errors and omissions or whatever, if and when you provide consulting advice to someone?

Dr. Stoicheff: I would hope the individuals concerned would, but as far as our association is concerned, these matters have not entered into our thinking.

Mr. T. P. Reid: You leave me at least with a bit of a problem then.

Dr. Carswell: I can perhaps pick up on one point, and I am not sure it answers directly. I personally feel that something that has to be emphasized is the very close interrelationship between the natural scientist and the engineer, and in fact I am one of each. I think that in the context you are querying you find

that generally you are dealing with very responsible and knowledgeable individuals. When such protections and licensing are required, I think invariably you find that people do register as engineers and get involved with the appropriate regulatory requirements.

I think we agree with the history put forth by the engineers this morning; it is certainly our perspective that there has been very little problem in this area, certainly in terms of protecting the public. The problems that have arisen in that context are the sorts of things you heard this morning from the engineers.

Normally, the physicists do not find that when directly involved in the operation of their association, although the individual members, depending on how much they are towards the applied end of this continuum themselves, have to make that value judgement as to whether they should or should not take the extra step to be certified or what have you.

Mr. T. P. Reid: I have one further question, Doctor. I just skimmed over your bibliography and all of the things are quite impressive, but you are not yourself an engineer?

Dr. Stoicheff: I have had four years of training as an engineer, but I would not be classified as a professional engineer since I am not a member of the Association of Professional Engineers of Ontario, and I do not practise engineering as I understand it.

Mr. T. P. Reid: For purposes of today, let us presume you are and I have hired you to do something on optics for me. What protection do I have as a member of the public? Presumably, what you are saying is you could not apply to APEO under this act and be licensed.

Dr. Stoicheff: I do not think I said that. If there was serious risk to the public, with the act as we have it, that is, Bill 123--

Mr. T. P. Reid: As amended.

Dr. Stoicheff: --as amended, I would become a member of APEO.

Mr. T. P. Reid: You would. What if you chose not to?

Dr. Stoicheff: Then perhaps one would have to think about how serious the risk is to the public. This is where the problem of safeguarding the public is so difficult to define. Under what circumstances is a particular act or design or reporting a substantial risk to the public? Under other conditions, when are we on the other side?

To give an example, I have a rather large research group. Fortunately, it is financed by the Ontario government and by federal agencies. I have seven graduate students working towards their doctoral degrees. About five years ago, we needed a particular device and we started to develop it. This happened to

be a rather powerful laser that eventually turned out to be a marvellous product which we handed over to a company in Ottawa, and last year it sold \$5 million worth. That was sold elsewhere, not in Canada.

Under the bill as it was before the amendment, it would have been difficult for me in supervising those students to carry on that activity. You might ask why, and we could go into all the technical details, but there was danger to those students in carrying out the designing and operation of the device. However, at the other end, as a final product, I expect an engineer at the far end where the product is made to be approving that product. It is not my concern to look after that end of it.

Mr. MacQuarrie: I have one question arising out of the amendment as accepted and that is on the definition of "natural science."

Dr. Stoicheff: Yes.

Mr. Mitchell: They have a definition in their brief.

Dr. Stoicheff: I opened with those remarks, and I am happy to repeat them. There have been many attempts to try to define that. I will not go into the problems of definition. For our purposes here, I use the federal agency called the Natural Sciences and Engineering Research Council. Under its aegis it finances research of engineers and the following scientists: biologists, chemists, geologists, astronomers and space scientists, physicists, computer scientists, pure and applied mathematicians and statisticians. I encompass those within the term "natural scientists."

Mr. MacQuarrie: What about some of the classical natural scientists such as biologists and--

Dr. Stoicheff: I am sorry. Did I miss biology? No, biology came first.

Mr. MacQuarrie: Including bacteriology?

Dr. Stoicheff: Yes.

Mr. Chairman: There being no further questions, we thank you, Dr. Stoicheff, and your colleagues for being so patient with us. We know you were scheduled this morning. Thank you for returning this afternoon.

The third witness is the Federation of Engineering and Scientific Associations with Mr. C. M. Bailey, the board member, and Mr. S. Nousiainen, the research officer.

2:30 p.m.

FEDERATION OF ENGINEERING AND SCIENTIFIC ASSOCIATIONS

Mr. Shalaby: My name is Amir Shalaby. I am vice-president of the Federation of Engineering and Scientific

Associations. I will be appearing with Chris Bailey to present this brief.

The Federation of Engineering and Scientific Associations is 10 years old this year. We have 25 member groups representing some 10,000 individuals concerned with engineering, scientific and other related professions. Most of our members are in Ontario and work in large corporations such as Atomic Energy of Canada, Ontario Hydro, Bell Canada, Spar Aerospace and the like.

We have been active in discussing the draft of this bill. We submitted a brief to the Ministry of the Attorney General in the fall; we also participated actively in the Professional Organizations Committee deliberations with an initial and final brief, and we have an active and continuing interest in the deliberations of this committee to amend the Professional Engineers Act. We feel that we speak on behalf of the several thousand working professional engineers in Ontario.

Our brief has several points, the most important of which concerns clause 12(3)(a). Mr. Bailey will discuss the details of that. We have a legal interpretation on the consequences of that clause if it passes as is. We also have several concerns about the election of officers of the association and other matters that Mr. Bailey will address.

Chris Bailey is the past president of the association and has been monitoring various concerns for the association of professional engineers and their effects on engineering in Ontario. I will give him most of our time.

Mr. Bailey: Mr. Chairman, we have three major concerns. One is what I will call the exemption clause, clause 12(3)(a) of the draft act. The second is the concern over whether the officer election procedure should be dealt with in the bylaws or by regulation. The last one deals with a couple of concerns arising out of the regulation of professional practice as it affects employee engineers rather than consultants.

Our major concern is the exemption clause, clause 12(3)(a). In our view this amounts to a reintroduction of a proposal for what was called industrial exemption. This was examined in a great deal of detail by the Professional Organizations Committee, and it was its conclusion that this should not be adopted because of many impracticalities and problems. The POC suggested instead an alternative way of reaching the same goals that was much more practical--it was thought by all concerned to be more practical--and in fact it has been included in the current act.

So what we have in the act is both a sizeable remnant of an approach that was recommended against and the alternative to it.

In our own review of this we initially assumed that the scope under 12(3)(a) was intended, and we were very upset because of the extensive study. We have since reached the conclusion--I may be wrong--that it is simply poor draftsmanship.

If you review the history of how this particular clause came

about, it started off with language from the Association of Professional Engineers of Ontario that was obviously intended, when you look back at the POC report, to be very narrowly defined and strictly limited. It dealt with areas where people who were not professional engineers did work that under the old definition of engineering in the act could be considered engineering: things like testing and maintenance, repairing, tool and design work, pattern making, designing of jigs, etc.

The other thing that leads us to believe this clause was not intended to have the wide scope it does is that I understand it is parliamentary practice that if there were major changes in an act, such as an industrial exemption, the notes to the act outlining it for the Legislature would indicate where there were major changes. There is no such indication. When we raised our concerns about this particular part of the act with the Ministry of the Attorney General, we were told in response that it did not see this particular part as having the very wide scope of application we thought it did.

The revised act seemed to widen it further so we took a legal opinion; this is in appendix B. It is from Mr. Aubrey Golden who is a well-known legal counsel in this province. He confirms our view. He makes reference in our discussion with him on the principle of ejusdem generis which says that when you lead a list of specific items within general terms, those general terms are interpreted in common law practice as having a wide scope, read in a wide way.

The words we are complaining about under subsection 12(3) are "machinery" and "equipment," exempting from the provisions of the act people involved in the design of machinery and equipment "for use in the facilities of the person's employer in the production of products...."

Our estimate is that it would take 50 per cent of the scope of engineering practice in this province--this is a rough estimate--out from under the act. All design and nuclear power stations if done by employees of Ontario Hydro would be out of the act.

For example, take the design of a plant by Dow Chemical that may release dioxin or other noxious chemicals, polychlorinated biphenyls, if the plant is not properly designed. Right now, today, the scope of engineering done by the employees of that employer would be covered by the act; that would be taken out.

I might also note in connection with industrial exemption, there are a fair number of states in the United States that have an industrial exemption clause and certain industries, such as the chemical industry, are not using professional engineers or use them very little. There is no requirement for professionals.

In our presentations to the Professional Organizations Committee, we identified one of the reasons for the number of situations we have had where plants were badly designed, resulting in releases of things such as PCBs and dioxin, as the climate they have in the United States of exemption for people working for an employer.

We also note that this would exempt a number of areas that deal with the health and safety of workers; for example, design of ventilation facilities in the mine by engineers working for Inco or technical employees working for Inco. To use an example that has come up recently, the design of the ventilation for a paint shop in Hamilton for Westinghouse would no longer be covered by the act, whereas currently it is supposed to be covered by the act.

The whole of the scope of this exemption is very broad. We came to the conclusion after our review that an original clause by the Association of Professional Engineers of Ontario, which was intended simply to cover tool and die makers and people doing similar work, designing very specialized production machinery, eventually ended up, by a process of dropping of words and changing that it went through, as something that I think was far from what the original intention was.

I also believe there is no necessity for this change. The numerous other clauses in the act--beneficial clauses which we support--have narrowed the scope and introduced exemptions for people who traditionally are doing engineering work but are not required to be licensed. If you dropped clause 12(3)(a) or revised the language, I think you would have, quite clearly, the scope of the act that the Attorney General intends, the association itself wishes and the POC intends. Clause 12(3)(a) introduces nothing but a large hole.

What changes do we recommend here? We see two alternatives. One is to drop it entirely; I do not think it serves any useful function. The other is to revise the wording. Instead of reading, "machinery, equipment...tools and dies," change it around to "tools, dies and other similar special production machinery or equipment." I think that is the scope that was originally intended by the APEO and that should be in the act.

Mr. Chairman, I am not sure, do you want me take questions on this issue or go on to the other two as well?

Mr. Chairman: What is the wish of the committee? Shall we take questions or shall be go on?

2:40 p.m.

Mr. T. P. Reid: I would like to hear from the Attorney General.

Mr. Chairman: Mr. Attorney General, your comments, please.

Hon. Mr. McMurtry: For some curious reason I am not overly concerned--perhaps I should be--about Ontario Hydro having people involved in working "in relation to machinery, equipment, other than equipment of a structural nature," etc., who may not be members of the association, because there seem to me to be so many other safeguards in place. There may be other examples where that is not the case, but my understanding is this was looked at pretty closely by the APEO.

Bearing in mind comments that were made earlier in the committee that you may not have been here for--I think you were here this morning, I do not know--the example of Great Britain was

given, of course, at a time when there was no regulatory statute at all. The Canadian experience is much different and these comparisons are not always very helpful, but it seemed to us there was a recognition by APEO of a need to build some flexibility into the act and that this could be done while protecting the public interest.

It would be helpful for me as a layman to have specific examples--more specific than those you have given me--as to the sorts of job situations where the public interest would be adversely affected by leaving this exemption in.

Mr. Bailey: I would love to do that. Let us come back to AEPO. While I am a loyal member of the association, we have not always found it to be knowledgeable about the work place aspects of things like this. I think we probably put in the most effective brief dealing with this question to the Professional Organizations Committee, for example, because we have the knowledge. The association was not as knowledgeable.

Let us come back to the question of Ontario Hydro. I think that is a very useful example, and there are other examples as well. We are not concerned about Ontario Hydro as it exists, but we have people who have come from the nuclear industry in the States.

We are familiar with the nuclear industry in the States and with the nuclear industry in Britain. I think the situation we have now, where there is a high degree of professional practices and high professional standards, is a safeguard for people in the nuclear industry in Ontario. These practices and standards are not always met to anywhere near the same degree in the States. That is partly a consequence of the licensing environment.

You are presuming the existence of a certain licensing environment, and then saying, "Since that structure has been there and certain things have come out of it, we do not need it any more." Our feeling is this is not likely to be so, that if you adopt a licensing--

Hon. Mr. McMurtry: In the US they do not have any body quite like the Atomic Energy Control Board.

Mr. Bailey: Sure they have.

Hon. Mr. McMurtry: Do they have the same degree of supervision?

Mr. Bailey: The Nuclear Regulatory Commission in the United States is a far tighter licensing body than the AECB is, because of the weaknesses on the industrial side and the many shortcomings.

Where quality control and engineering has been done without--for example, there is a nuclear station being built by Cincinnati Gas and Electric. It is 97 per cent finished. A conclusion has been adopted. The NRC did a detailed review and found four million pieces of paper, other things, that were

omitted. The only conclusion was there was a massive attempt to deceive the licensing body. Nothing was said about it. You did not have the licensing environment; there was not the protection of the public.

I am sure that would not happen in Ontario, because Ontario has the kind of structure, the fact that engineers are licensed and have responsibilities to the public and have associations to represent them, so you do not get these kinds of circumstances. We have dealt with this in previous briefs to various committees of the Legislature and there is a significant difference in the practice we have. It has affected the nuclear industry in the States.

That is one example. Yet another example is, of course, the question of chemical plants and the operation of mines. I think we can clearly say from the working level that the presence or absence of a requirement that you be licensed does introduce a difference in climate. You are aware. Not always; it is not something you carry on your shoulder. But it affects the way engineers in the work place look at their responsibilities vis-à-vis the employer and vis-à-vis the public.

I might also note again that we put these questions in a lengthy brief to the POC dealing with all the problems you get with these types of questions, and Mr. Leal, who was the deputy minister at that time, found it very convincing. He went to this alternative form of licensing, which provided the same flexibility and got rid of the problems that an industrial exemption would have, where people would no longer have any licensing requirement.

Hon. Mr. McMurtry: You are undoubtedly more familiar than I am with the concerns of the associations dealing with technicians, technologists and whatnot, who felt they would be very adversely affected if there were not some industrial exemption such as this.

Mr. Bailey: That is another question the POC dealt with. They did not express a lot of enthusiasm, as was noted in the POC report, for the idea of exempting the engineers. They did not want an industrial exemption for engineers; they wanted licensure for their own technologists.

We made the point that a number of engineers who are graduated from university do not maintain their APEO membership; the estimates go anywhere from 30 per cent to 50 per cent of the engineers working in industry.

Yes, there is also the question of the fact that there are significant differences between the career paths typically followed by technologists and those followed by engineers. The fact that the engineers do not maintain their licensing indicates it is not the fact that you have an APEO membership but the fact that you graduate in engineering--it is a difference in training that creates the differences rather than the absence of a licence that says, "Only I can do that type of work, and you cannot do that type of work."

Clearly, if engineers felt that maintaining their APEO membership was necessary to safeguard or to follow a certain career path, there would be a much higher percentage than the 50 to 70 per cent now.

I also think anyone who is involved in the industry will say just from normal experience that this is certainly the way it is. It is not licensing; the licensing does not pose a significant barrier to any technologist in this province. The practices of the past did not prevent them from working in technical work and the new act makes it explicit that they should have the right to practice, provided they are under the responsibility or direction of an engineer, which in fact is the practice of most employers.

So the licensing proposal the POC recommended, which was to allow technical people to work in engineering even if they were not licensed, provided they are under the responsibility, authority and supervision of an engineer, corresponds to the practical realities of the engineering team, and it is the eventual proposal adopted by the POC as an alternative to the industrial exemption proposal. The act has them both, for some queer reason.

2:50 p.m.

Mr. MacQuarrie: I have one question with respect to your recommended language in clause 12(3)(a). You refer to "tools, dies and other similar special production machinery or equipment." This, I would assume, relates to the traditional trade of tool maker and so on.

Friends and constituents in the scientific and applied science community in my constituency have brought forward another technical area in which there is a very serious shortage, and that is instrument makers.

Mr. Bailey: Just add the word "instruments." "Special production machinery, equipment or instruments." You are right. I acknowledge the point you are making.

Mr. MacQuarrie: I wonder what others are being excluded by narrowing this language a little.

Mr. Bailey: The Association of Professional Engineers of Ontario in the Professional Organizations Committee report brought in three areas of exemptions of which the tool and die maker was one. The second area was people doing testing and maintenance and the third was the people doing repair work.

Under the new act, the limitation to require the application of the principles of engineering would safely exclude most of these traditional nonprofessional design activities, as I guess you would call them.

Mr. MacQuarrie: They are essential trades.

Mr. Bailey: They are essential trades and nobody would

want to have them come under the act and have restrictions placed on them.

I will make another point. The language in the current draft act would put any tool and die maker who is in independent practice--that is, he has his own company. I know a pattern maker who is in Oakville. I do not know how much Mr. Snow would appreciate having him put out of business. He is in independent practice. He supplies patterns to Ford of Canada. He would be exempt from the act only if he is working for an employer; if he is in his own business, he would fall under the act; the exemption would no longer apply, and bang.

We have suggested that the limitation in clause 12(3)(a) in the words "for use in the facilities of the person's employer in the production of products" should be dropped. The exemption should be applied narrowly to tools, dies and similar production machinery.

Hon. Mr. McMurtry: Would you give me that again?

Mr. Bailey: It is on page 6 of our brief at the bottom. We have "tools, dies and other similar special production machinery, equipment or instruments." I am suggesting instruments as well.

Mr. MacQuarrie: Apparently there is quite a shortage --

Mr. J. A. Taylor: Is that picked up from legal opinion?

Mr. Bailey: That picks up from the legal opinion. Apparently, if you change the wording around and give the specific items first and then say "and others," it gives the general words a narrow meaning, but if you put the general words first, they have a very broad interpretation.

Mr. Chairman: Mr. Reid, do you want to ask a question while they are consulting?

Mr. T. P. Reid: I am a little confused. But to fill in the silence--go ahead. Mr. Renwick usually makes things clear for me.

Mr. Chairman: I wish he would do it for me.

Mr. Renwick: Do not count on it.

Let us assume for the moment that we did not try to narrow the ambit of the section and just removed the section or, alternatively, left the section in. What effect does that have on the employment of professional engineers?

Mr. Bailey: It would simply mean there would be no requirement to be a registered professional if you were doing work where you are designing facilities for your employer.

Mr. Renwick: Let me leave that aside. There would not be anything to prevent the person from continuing his professional

registration if he wanted to do so. There are various gradations of plants, and I can only do it by using examples. There would be an organization such as Ontario Hydro, which has professional engineers, and there would be an organization such as a plant in the riding of Riverdale, which at the present time has no professional engineers on its staff.

Mr. Bailey: It would not need them if the plant was not being designed. If it was already operating, it would not normally need professional engineers. It has not been a practice. The language without clause 12(3)(a) or with the narrow definition would still not require--the elimination of that thing would not create a need for a professional engineer in that plant.

If you redesign the plant--

Mr. Renwick: I would like to explore that a little bit. Would you enlarge on that?

The way in which the practice of engineering has been tied into public welfare or safety of person or property I can well understand in established organizations, such as the larger organizations represented by the member groups within your organization that are listed in the appendix to your brief. I can understand, if we left this in, some efficiency expert might say, "We would like to cut out some of the requirements and obligations that were formerly performed by professional engineers, not necessarily by dismissing them, but by eliminating a particular step in the process." That is one set of circumstances.

The other set of circumstances is illustrated by a functioning plant in my riding which does not have a professional engineer on its staff at present. If we were to take this out, if I read the definition correctly, that company would be required to engage the services of a professional engineer if it was doing "an act that is within the practice of professional engineering in relation to machinery, equipment," etc.

Mr. Bailey: The doing of the act within the practice of professional engineering is the key. Just in operating a plant, you make fairly obvious minor changes that do not require engineering judgement, the practice of professional engineering, which is defined in a roundabout way as the application of the principles of engineering. If you do not need that kind of knowledge and skill to make a change in how a machine operates, or you do not wish to make any change in how the machine operates, then you do not need a professional engineer.

On the other hand, if you decide your plant needs robots, you want to have some robots brought in, you now have a question in some areas that may involve a professional engineering principle in design. The plant does not need an engineer but whoever it bought the robots from would need, and today would normally have, an engineer to design those robots and to make sure there is no serious danger to the people in the plant who are going to operate those robots.

Am I making myself clear? If the plant continues to operate

just as it is, it will not need an engineer. It is not designing any production machinery.

Mr. Renwick: It says, "for use in the facilities." Are you saying if it is in use in the facilities of the person's employer, they could do it themselves?

Mr. Bailey: It means design of machinery or equipment. Engineers are only required for design. It may not say design; it may say "an act that is within the practice of engineering," but that essentially means design in this case, design or evaluating the performance of, etc., in a professional way.

Mr. J. A. Taylor: You would not need an engineer to put a new handle on an axe then.

Mr. Bailey: No.

Mr. J. A. Taylor: In other words, if you replace what is there, you are okay. It is when you start introducing new features presumably you have a problem.

Mr. Bailey: If you introduce new machinery, the design of which requires application of the principles of engineering, you should use an engineer.

Mr. Renwick: Semantically I guess the distinction you are making is to change the word "for" to the word "in" so that it reads "doing an act that is within the practice of professional engineering in relation to machinery, equipment...in use in the facilities of the person's employer in the production of products by the person's employer." That would not require a professional engineer, but an act in relation to machinery "for use in the facilities," that is, new equipment, would. It seems to me to be a very refined distinction.

Mr. Bailey: I think "for" and "in" are both--the distinction is simply that to have and operate machinery does not require a professional engineer--it is not "an act that is within the practice of professional engineering"--but to design new machinery, if it is beyond simply inventors or normal design skills and requires application of engineering principles, it should be designed by an engineer.

Mr. Renwick: Mr. Chairman, I cannot clarify it for Mr. Reid any more than I have.

3 p.m.

Mr. Chairman: Thank you, Mr. Renwick. There being no more questions, perhaps we could proceed to your next concern.

Mr. Bailey: The second point concerns the procedure for the election of officers within the association. This is currently a matter to be dealt with by regulations.

To refresh everyone's memory, regulations are passed by the council of the association and subsequently approved by the

minister and the Lieutenant Governor in Council. The bylaws, on the other hand, are passed by the council of the association and approved by referendum by the association's membership.

We believe it is clear in the act, and I think we have had it confirmed to us, that the bylaws are intended to relate to the internal affairs of the association and the regulations relate to matters that are of public interest, how the association conducts its public-interest functions. We see no logical reason in principle why the question of how the association goes about electing its officers should be a matter for regulation. It is obviously an internal matter and it should be dealt with by bylaw.

Beyond the question of principle there is an underlying issue that makes it significant to us. The question of how the officers should be chosen within the association has been a subject of controversy within the association for some years; and incidentally, we outline this controversy at length in appendix C.

There is a proposal that has been supported by what we like to call the establishment in the council. The association's proposal was that the officers of the association should be chosen from within and by council--that is, indirectly rather than directly by membership. It was first proposed in 1976 as a result of a committee.

The first time in council it was thrown out; no one was interested at all. It came back with a council that had, in our view, fewer employee engineers, and that time it was sent to the membership. The decision was, "Okay, we are in favour in principle, but we will let the members decide." The members did not vote in support. This, we understood, was supposed to be the question that we decided by what the members felt. The members were not in favour, so we thought that was the end of it.

Incidentally, we have opposed this change all along because we think, first, it will make the council of the association less effective. I believe the democratic procedure is the best way to generate a vital, active and effective association executive. Second, we think it will tend to stifle dissent and enforce conformity with the establishment view in council. Finally, we think it is intended to reduce--not only will reduce but is intended to reduce--the number of employee engineers on council.

The underrepresentation of employee engineers on council was documented in the POC staff report; they specifically noted the underrepresentation. This new legislation should be moving to things that encourage increased representation, a more balanced representation. On the other hand, putting this in regulation leaves open the possibility that a procedure that is not favoured by the majority of members can be adopted by council and approved by the minister and the cabinet.

I might say, without attacking the minister himself, that in a matter like this it is likely to be rubber stamped, because the minister has no real interest. If the association's council comes along and says it wants this procedure, why would he look at it twice? He is simply going to accept it.

We believe the question should be put over into the bylaws and left to the members to vote on if changes were proposed.

Mr. Chairman: Are there any comments, or shall we move on to the next issue?

Hon. Mr. McMurtry: Move on to the next issue, I think.

Mr. Bailey: The final issue is that we have a couple of suggestions in relation to the language dealing with the regulation of practice. The first one deals with the requirements with respect to delegation and supervision.

The new act in section 17 provides specific requirements that were along the lines proposed by the POC relating to the degree of direction and supervision required by a professional engineer when nonengineers are doing engineering work under his authority, but there is nothing specified in the act with respect to engineers in the situation in industry.

The POC recommended language with respect to both situations, and we think it is unfortunate it was left out. It is not simply a question of a technicality. We have had experience in the past, though not recently, where there have been abuses by senior engineers in a corporation, for example. It was identified that drawings and specifications that needed to be stamped would be stamped routinely; in one particular case I can think of 2,000 drawings which were done over the weekend, just one after the other.

These kinds of abuses led the Quebec act to have a requirement that the exemption for engineering work to be done by nonengineers would be for only those working under the immediate direction of an engineer who assumed responsibility.

We do not think that is fully necessary in an employment environment. The council of the association in 1978, I think--and it is in appendix D, which is on the last page--looked in some detail at the whole question of delegation of supervision in engineering work and came up with guidelines which are for the information and guidance of the professional engineers.

The particular parts we note are the distinction made between work that involves novel applications of engineering principles. When you are doing something new, the guidelines require close and continuing personal direction and supervision.

These are the words adopted in the act for consultants. For more routine work, which is commonly called "handbook engineering," and where it is the practice to have technologists and technicians just under the general direction--you are not required to be sitting on top of them every day--the guidelines simply say the engineer should be able to maintain an adequate knowledge and control of the work being done under his responsibility.

We think that distinction can be left in the regulations, but we do think it is important to avoid abuses and

misunderstandings. For example, someone comes along and says: "Why should I be required to provide personal direction and supervision? Nothing in the act says I have to do it." "Yes, but your association has guidelines." "I did not know that. No one drew my attention to that."

It should be in the act, so under clause 12(3)(b) we have proposed the addition of the words, "and who maintains an adequate knowledge and control of" before the words, "the services within the practice of professional engineering to which the act is related." That simply will introduce the required element that you have to maintain adequate knowledge and adequate control of the work that is being done under your responsibility. Otherwise, you are left with a jurisdictional vacuum. There is no requirement.

The other area we would like to draw to the committee's attention is the provisions relating to unauthorized practice. We drew the POC's attention to the fact that, as currently set up, the APEO has a lot of problems dealing with an employer, dealing with an employee-type situation.

The association has said it does not have a lot of trouble, but in theory if the APEO comes along and someone is doing unauthorized practice, working for an employer, and the APEO wants to investigate it, there is nothing to stop that employer from saying: "Take off. I am not interested. You cannot come in my work place and I am not going to supply you with any drawings the basis of which will set up a prosecution of my employees."

That is the first thing. The association does not have any power to ask for the drawings.

3:10 p.m.

The second thing is we think the current approach of prosecuting individuals taken by the APEO in many cases misses the mark. It is not the individuals who are doing engineering work and should be doing engineering work, it is the employer and the practices of the employers, the whole structure in the work place, that says: "Where do you have engineers who are taking responsibility? What supervision do you have?" These are the right questions to be asking.

As it is, the association can only go along and prosecute some poor individual whose employer said, "You are now going to be the design engineer." He replied, "I have not got the title," but the employer said, "Do you want the job or don't you?" He then had to take it. The employer made the decision, and the employer is the one APEO should be dealing with.

We support one of the recommendations under the POC report that the association be given the power "to seek from the Divisional Court a cease and desist order against any person, corporation"--and it goes through a lot here.

In addition we suggest that the association have the power--and this language is adopted directly from the Quebec Engineers Act--"to appoint an investigator to enter at any

reasonable hour upon the premises where the practice of engineering is or is likely to be carried out for the purpose of verifying whether the provisions of section 12 are being followed."

The comments we have had from both employers and engineer groups in Quebec where they do this sort of thing is that it has caused no problems at all. Normally capable engineering employers, responsible employers, have had no trouble satisfying the Quebec order to ensure that the intent of the act has been carried out.

As it is now, the association totally lacks any power in this respect. We think that is a deficiency the act should cure.

Mr. Renwick: Perhaps the Attorney General or Mr. Fram would answer the question of why the election of officers is by regulation and not by bylaw.

Mr. Fram: It has been customary to put them in the regulation-making authority. In addition, because you want some ability to scrutinize the distribution within the profession of officers, right now the act requires election or appointment of persons from various branches of engineering, the seven branches of engineering you heard about earlier.

The regulation power was felt to be the most appropriate mechanism to ensure appropriate distribution of representation.

Mr. Laughren: Is that standard in other professional organizations? Are they standardizing them?

Mr. Fram: I do not think it is a particular issue. It is just the way it was drawn up.

Mr. Laughren: No, I meant other professional organizations--

Mr. Fram: They have them set out in regulation.

Mr. Laughren: They have them.

Mr. Fram: I do not know if that is uniform. It could vary. It is just the way it happened here.

Mr. Bailey: Are you saying there is a public policy content as to how the officers are chosen?

Mr. Fram: There are public policy concerns about how the officers are elected. That was seen in the structured way the previous act was set up to create appointments; for example, the existing Architects Act has electoral districts. There has been a concern by the government over time about how these bodies are elected to ensure fair representation.

Mr. Bailey: Is it not also a concern of the members? How do we get our input?

Mr. Fram: I believe it is a practice that will continue in future. Changes in regulations will be circulated to members

before they are brought to the Attorney General for consideration.

Mr. Bailey: We will hotfoot it in with a brief then.

Mr. Renwick: In the drafting of the bill, were you going on tradition or were you going on some solution of what is referred to in the submission to us as the longstanding underrepresentation on council of employee engineers?

Mr. Fram: We were going on tradition. I do not think we had any particular thing in mind. At least, I cannot remember one at the moment.

Mr. Renwick: It says the Professional Organizations Committee recommended that the association should frame provisions to ensure reasonably proportionate representation of employee engineers on council. Is there any assurance that will be done?

Mr. Fram: I assume their new regulations, which we have not yet seen, will do that.

Mr. Bailey: Maybe I can add another consideration for the committee. One thing that alarmed us intensely was the discussion draft of this bill. We must remember we had this long fight within the association itself as to whether the officers should be elected by the membership directly or whether they should be determined by the council indirectly. It had been a dead issue in the association.

The discussion draft had the proposal that the officers should be selected indirectly. That suggested to us that the Ministry of the Attorney General and possibly the Attorney General himself were listening to views from the association, from either the establishment or the staff, that were not representative either of the view of council as a whole or the general membership's view. It was this reason that led us to be particularly concerned about having it left simply to regulation.

If they have the inside track, why will they not have the inside track in the future? As members, what could we do? It just goes on right on through as a change.

Mr. Fram: In this connection, the discussion draft did provide what you suggested. The result of the response from the Federation of Engineering and Scientific Associations and others was a change.

Mr. Bailey: You left it to council to propose something to the Attorney General and for him to approve it, but as members we still do not have any input, nor is there anything in the act that says the election shall be such and such. If you want to have input and not have it solely by the association, put it in the act that they will be elected directly, if that is a concern. Everybody gets an input then.

Interjection.

Interjection: Yes. That is the way it was previously.

Mr. Renwick: I suppose what we are hearing is that the internal feuds that reverberated throughout this organization for many years, and of which we hear bits and pieces from time to time, basically are going to continue under this legislation. They may have solved the problems with their fellow professionals, the architects, but they have not solved the internal problem of the division between employee engineers and nonemployee engineers.

Hon. Mr. McMurtry: They each have an equal vote, do they not?

Mr. Bailey: Each has an equal vote.

Hon. Mr. McMurtry: There may be problems with any democratic system as to those who are elected. I know even some of us around this table occasionally hear that we do not always represent the views of our constituents to the extent some of them think we should. That is an understandable criticism.

As I always say to my constituents who are not happy about my support for something, in the final analysis my most demanding constituency is my own conscience. It seems to me it is a question of the employee engineers electing people to their association.

Mr. Bailey: This comes to the guts of it if someone runs for council. Some people run and serve a year or two as regional councillors and then step off. I will be quite honest; such a person is not likely to be very concerned about the fact his views differ from those of the members because he does not have the interest a member of the Legislature has in getting re-elected.

3:20 p.m.

The chap who is running for vice-president and eventually president, who wishes to have the honour and prestige of being the president of the Association of Professional Engineers of Ontario, is more responsive. He does have a great deal of concern and he does listen to the input from his members. What is proposed in indirect election is to lose that. We have the right to vote only for the regional councillors, and those people who are most likely to be interested in continuing elections are no longer elected directly. That is why this issue is important to the democratic functioning of the association.

If it were proposed, for example, that once a government is elected, it should thereafter appoint its members, those who wish to get on, or appoint those of the Legislature who wish to run again in the new Legislature, I think most of us would feel that is--

Mr. Laughren: Appointed to cabinet.

Interjections.

Mr. Chairman: Could we move on a little?

Mr. Elston: Basically I think we are getting at the question I was going to ask. How do these people have their concerns about the election of officers dealt with under the regulations? I have seen an indication from the people who have spoken to us previously that they do not fall in line with everything that has just been said here by these witnesses. It seems to me there is a very sharp divergence of opinion, and I do not know how you decipher it in a regulation battle unless you lock them in a room for two or three days and the winner comes out.

Mr. Fram: I have not seen the regulations yet, but I understand that the regulation governing the election of the president will continue for the time being until there is some change in the regulations. In the first regulations it will be an election to office because it has not yet been supported. Thereafter, all those regulations, I understand, will be circulated to members so they will be able to send the Attorney General a statement.

Mr. Bailey: I hear what you are saying, but I have given you background, and if you read through appendix C you will understand our concerns on this. We would much rather see either the protection of having a bylaw or else a specific provision for the election of officers within the act.

The current association council has adopted what I understand is a compromise proposal: that out of the three officers, two would be elected and one would be appointed from within council. It is called a compromise proposal, and I think it looks like something that may not stand the test of time. Certainly we are not unhappy with it, as two thirds of the officers, including the president, are elected directly by the members.

We have a lot of insecurity on this issue because of the way this proposal, which has not had support in council and has not had support from the members, has reappeared about four times. In fact, we call it the Lazarus proposal because it just keeps coming back to life.

Mr. Elston: After it has ascended to the Attorney General and he has been able to pass down material, I presume after the first election, perhaps it will be up to the profession to deal with it or somehow they will deal with it. I do not know how we could legislate what is going to happen any better than you people getting together or not getting together, as the case may be.

Mr. Bailey: They never consult us.

Mr. Elston: There will be a circulation at least. One hopes you will be able to get involved in that circulation.

Mr. Renwick: I would simply ask Mr. Fram as draftsman of the bill to look at the provisions of subsection 46(2) and why there is not some conformity between those who are entitled to indemnification and the provision relating to immunity, for example. It would seem to me that there should be some

consistency. If a member of the association, for example, were to carry out some act, perhaps he should be mentioned as well in subsection 46(2) as being entitled to indemnification.

Mr. Fram: You would then be on the committee.

Mr. Renwick: You never know.

I take it also that subsection 46(1), for practical purposes, means that no member of the public has any recourse for failure to carry out the principal provisions of the practice of engineering with respect to the safeguarding of life, health, property or the public welfare.

Mr. Fram: Provided the actions are done in good faith.

Mr. Renwick: Yes, or they fail to do them in good faith.

Mr. Fram: That is right.

Mr. Renwick: I am not suggesting it should be, but I think it should be very clear this does not give rise to any right for any member of the public. If this association defaults on its professional responsibilities, there is no recourse to that association.

Hon. Mr. McMurtry: You mean you cannot sue the association--

Mr. Renwick: Yes.

Hon. Mr. McMurtry: --any more than anybody can sue the Law Society of Upper Canada, the College of Physicians and Surgeons of Ontario or the Ontario Association of Architects. I do not think anybody has seriously suggested--perhaps they have--that there should be some cause of action in relation to members of an association with respect to carrying out their governing responsibilities. I think you might have trouble getting people to serve if that cause of action were provided.

CANADIAN SOCIETY FOR PROFESSIONAL ENGINEERS

Mr. Chairman: The fourth witness is the Canadian Society for Professional Engineers. Greg McNeice, professional engineer, is president. Would you introduce yourself and your colleagues.

Dr. McNeice: Mr. Chairman, I am Dr. Greg McNeice, president of the society. I have with me Mr. Peter De Vita, Mr. McInroy and Mr. Aktar who are members of our board.

I want to thank you for the opportunity to come and speak to you and to the committee this afternoon. I see all the committee members have a copy of our submission and I will refer to that occasionally throughout my presentation.

I would like to draw to the members' attention pages 15 and 16 at the very outset since they explain what this society is all

about, its origin and its functions. Briefly, I would like to focus your attention on page 16. You will see this society is to professional engineering what the Ontario Medical Association is to the medical profession and the Canadian Bar Association is to lawyers. We are here today representing a society which is concerned solely with the self-interest aspects of the profession. Our membership is in excess of 3,000 and is composed of registered professional engineers in Canada.

3:30 p.m.

I would like to read the presentation to the committee so I can focus on the major issues we have and, in doing so, point out specific items within the presentation, which is the document before you. I might add the document itself is constructed so that the first eight pages up to the end of recommendations, page 8, are the essential aspects of our submission. The basis of these recommendations and additional material are contained in the appendices.

This society fully endorses the principles of Bill 123 and it equally supports the objects and their format, as they appear. We are well aware of the difficult task that Mr. Steve Fram of the Attorney General's office had in writing this act. We not only compliment him on his effort, but also thank him for accepting this society's recommendations concerning the objects of this act, as put forth to the Attorney General at a meeting held last January among Mr. Fram, this society and the Association of Professional Engineers of Ontario.

However, on the basis of the provisions of this bill, as they are written, the bill is dangerously flawed for the following reasons: It contains contradictions; it has irrelevancies to the purpose and objects; it has potential divisive aspects; and it has infringement on individual rights, thus rendering it liable to challenge. For these reasons, we appear before you today. Without appropriate amendment of this act, as written, it could jeopardize the integrity of our profession, ruin the public image and, above all, lead to governmental licensing control. I am certain that each of you, as honourable gentlemen, would agree that if this act can be amended to prevent this, it should be.

This society has provided the committee with copies of a document which, when read in its entirety, explains in depth the basis of its recommendations. Eight specific recommendations are made on pages 4 through 8. We ask that five clauses be modified and three be deleted, or at least modified as indicated on those pages.

I would like to review the submission with you and answer any questions you may have. To provide you with an overview of the submission, I will make the analogy between the writing of a good act and the construction of a four-legged table.

If you remove one leg, the table will itself remain standing, but its function will be seriously impaired. The three remaining legs will share the load if they are properly positioned and secure. The three basic legs of this bill are provided through

the statement of principle, the constitutionality of its content, and the language used therein. If the act is constructed with these three essential supports in mind, the initial stability of the act will be provided.

The fourth and final consideration relates to how the act is interpreted and administered by the licensing body. It is fundamental to the passing of this legislation that the image of protecting the public be preserved. This preservation requires clear evidence of sound professional integrity through the demonstration of competence in the administration of the act. Therefore, it is paramount that this bill be corrected so as to provide only one interpretation, and that is to serve and protect the public, and for no other purpose.

With reference to leg one, I draw your attention to page 2 of the submission relating to the principle underlying this bill. The act should be reasonably consistent with the principles enunciated in the first reading of the bill on November 17 by the Attorney General, in which he said:

"It is by now axiomatic that self-governing licensing bodies exist only to serve the public interest. The financial or other interests of their members should not be a concern. The economic benefits that may inure to the possessors of a licence are a possible byproduct of licensing, but it is not a reason for the Legislature to confer the licensing power on a self-governing organization."

The provisions under regulations and bylaws should entirely pursue the objects. Indeed, had the provisions of this bill been written in reference to the objects, we would not be here today.

I draw your attention to paragraph 8(1)21 of the bill on page 11, which says, "authorizing the making of grants for any purpose that may tend to advance knowledge of professional engineering education, or maintain or improve the standards of practice in professional engineering or support and encourage public information and interest in the past and present role of professional engineering in society."

Basically, this allows image-building of the profession. There is nothing wrong with this in itself, but is it the role of the--

Hon. Mr. McMurtry: If it is successful, they might share their success with the lawyers as to how we might go about improving our image.

Mr. Laughren: It is too late for that, Roy.

Dr. McNeice: Perhaps the Attorney General might like to hire an engineer to look into that.

There is nothing wrong with this, but is it really the role of the licensing body to do it? Surely not. There is already a multitude of organizations in effect, as well as industry itself, actively engaged in this type of activity. We suggest that the

particular clause should not contain the provision for things such as encouraging "public information and interest in the past and present role of professional engineering in society."

The question is, what has this to do with protecting the public's interest, with serving and protecting? This basically is a self-serving item. We recommend, therefore, that it be deleted, or at least be modified to state, "authorizing the making of grants to advance knowledge of professional engineering, or maintain or improve the standards of practice in professional engineering."

Second, I draw your attention to paragraph 8(1)24 of the bill on page 12. I would pose a question on this clause. What has this to do with serving and protecting the public interest? The paragraph reads, "providing for group insurance plans, other than for professional liability, an employment advisory service and retirement savings plans in which members of the association may participate on a voluntary basis."

These are clearly self-serving. There is no question about that. There is no need for interpretation. These are economic and financial benefits to the profession and, as written, are a direct violation of the principle enunciated by the Attorney General.

3:40 p.m.

The previous act did not contain these provisions. Why now? Is this not a clear indication of an expansion of services? In fact, we contend that this should be deleted.

If the intent is not to expand services, then this clause should be amended to reflect the existing services; if it is not intended to expand, then it should be clearly written as such. So our recommendation is that it be deleted. It is not necessary in this act. It has nothing to do with serving and protecting the public.

Mr. MacQuarrie: Excuse me just a moment. On that aspect one thing the association mentioned during the course of its presentation was the tremendous number of students who have graduated during the past two years who are unable to find job placements to qualify for membership in the association.

Where would you place the role of an employment advisory service in respect of that group, which is very much in need of some advice? Would it be with the association or would it be with a group such as yours?

I know the law society in a similar way sends out questionnaires on articling and all the rest of it to try to place students. With all due respect, I think some advisory role is necessary somewhere if these young people hitting the job market are to be served or helped.

Dr. McNeice: There is no question about that. Indeed, it is the professional responsibility of all of us as professional engineers in practice to do something for this type of situation.

This very society of which I am president is set up so we can provide services like that. We do not have them available at this very moment except on an individual basis, but the object we have in our society is exactly to serve the professional engineer. Students can be nonvoting members of our association and they can come to us for all kinds of assistance.

Mr. MacQuarrie: But to my mind there is a public interest here, too, in seeing those students placed. You say the act should be directed to--

The Vice-Chairman: If I may jump in here, Mr. MacQuarrie, let us first allow the people to continue with their presentation. I have you down as a questioner.

Mr. MacQuarrie: I will interrupt at that point.

The Vice-Chairman: At least you have given notice that you have some concerns in that area.

Dr. McNeice: If I may go back to the clause on group insurance plans and other items such as that, if that is not deleted, because it is self-serving, at least it should be modified to reflect existing services such that these services will not be expanded in the future.

This morning you heard the president of the association indicate that there is no intention to expand, so we recommend that the word "existing" be introduced in paragraph 8(1)(24) and that it read: "providing for existing group insurance plans, other than for professional liability, and existing retirement savings plans in which existing members of the association may participate on a voluntary basis."

I make the point here--and this is important--that if new members coming into this association are also allowed to take these services on, then it is our interpretation that in fact this is an increase in those services. In other words, if something is already in place for historical reasons, there is no reason to allow it to continue forever. It will be well served if we have other self-serving organizations such as ours to do these kinds of things. I try to make the clear division between the licensing body and the self-serving; lawyers and medical doctors have them, and we now are here and available to engineers.

The second leg relates to the constitutionality of the act. The question of constitutionality is now pertinent in the light of the Canadian Constitution. No part of the act should infringe the rights enshrined in the federal Charter of Rights and Freedoms. The Attorney General has recognized this necessity.

If the act allows a licensing body to undertake self-serving activities, of which perhaps entrenched membership in other organizations may be an example, does the act infringe on the rights of freedom of association?

There is no longer a place simply for opinion on this matter. As of October 27, 1983, Mr. Justice Galligan set out the

acid test. I refer you to the three-judge decision. The acid test itself is outlined on page 13 of our submission, if you would like to turn to that page. This was a decision of three judges which basically stated that at least part of the Inflation Restraint Act was unconstitutional.

Now I refer to the bill, page 11, paragraph 8(1)19, "respecting membership of the association in other organizations the objects of which are not inconsistent with and are complementary to those of the association, the payment of annual assessments and provision for representatives at meetings."

Does the licensing body need to be a member of other organizations to serve and protect the public? This suggests an inability to conduct its own affairs.

Will it join the Association of Polish Engineers in Canada, the Society of Ukrainian Engineers and Associates in Canada, or any number of other engineering organizations that are listed on page 27 of our submission? There are innumerable technical societies and other types of serving societies and self-interest societies. Indeed, it could even join the Canadian Society for Professional Engineers, which is a self-serving organization.

The association currently has membership in the Canadian Council of Professional Engineers, which is a national organization with objects not consistent with those of the present act. The words of this paragraph not only allow continuation of this membership, but provide the right to pursue other memberships. This imposes mandatory membership of the individual professional engineer as a licensed member of the association. Such imposition is a violation of the federal Charter of Rights and Freedoms.

Freedom of association is an individual right and not that of any organization. Any imposition resulting from paragraph 8(1)19 begs the question of the constitutionality of this bill. This clause should be deleted or at least modified as per the objects of the act. Any membership taken by the association in organizations whose objects are not consistent with the principle object of Bill 123 would render the licensing body liable to challenge.

If the clause is not deleted as we recommend, our modification states, "respecting participation of the association in other organizations the objects of which shall be consistent with the principal object of the association."

3:50 p.m.

The third leg relates to the language of the act. I draw your attention to pages 9 and 11 of the bill, subsection 8(1), paragraphs 1 and 19. Page 11 contains paragraph 19. The bill at two key places uses the words "not inconsistent with this act."

Subsection 8(1) says, "The council may pass bylaws relating to the administrative and domestic affairs of the association not inconsistent with this act and the regulations and, without

limiting the generality of the foregoing...." Paragraph 8(1)19 says, "respecting membership of the association in other organizations the objects of which are not inconsistent with and are complementary to those of the association, the payment of annual assessments and provision for representatives at meetings."

We recommend that the words "not inconsistent" be changed to "shall be consistent" with the objects of this act. The language of the act should be positive, precise and specific and should not give rise to ambiguous or multiple interpretations. Traditional rules of the English language should be applied to limit it to strict interpretation.

The phrase "not inconsistent" is a double negative giving rise to speculation on its interpretation and creating confusion in council, in court and in the public. The society recommends that the word "consistent" be used instead. It is positive, specific and has only one interpretation.

Again, the words "not inconsistent" allow one to do things other than those in accordance with the objects. This undermines the very purpose of having objects in the act in the first place.

I ask you, gentlemen, if, after this act is passed--if it is left in its present form--the association decided to open a public travel agency or to own and operate a public restaurant or an investment club, would these things be considered not inconsistent with the objects? The extreme example would be membership in a political organization. They are certainly formed for the public interest.

Hon. Mr. McMurtry: We are prepared to pass that.

Interjection: We have had enough, eh?

Hon. Mr. McMurtry: We think there may be membership in certain political parties that is inconsistent with the public interest, but I do not think we will get unanimity about that.

Dr. McNeice: Unless the act is clearly written and the double negatives are replaced by a single positive, such as the word "consistent," the act will be subject to more than one interpretation, and this will obscure the focus on the principal purpose of this act, which is to serve and protect the public. It will make the act more difficult to administer.

With that I complete my presentation, and again I thank you for the opportunity to speak.

Mr. Gillies: Dr. McNeice, I do not know if you were here this morning, but I think some of the questions you have raised were certainly on the minds of a couple of the committee members this morning.

With respect to what seems to be the double role of APEO both in being the licensing body and to an extent in taking on some of the attributes of an interest group--

I forget the figure on how many professional engineers there are in the province. Can tell me that? Is it 50,000?

Mr. Fram: Fifty thousand.

Mr. Gillies: How many of those engineers are members of your organization?

Dr. McNeice: There are at present 3,200 plus.

Mr. Gillies: I am looking down the list appended to your presentation. Are there any organizations on this list that would be larger, or are most of those very much interest groups of a couple of hundred or a couple of thousand people?

Dr. McNeice: A lot of these are technical societies, except, of course, the Polish engineers. I am not sure. I imagine some of them would be large but still in the hundreds. Do we have the chemical institute here?

Interjection: We have the Canadian Society for Chemical Engineering.

Mr. Gillies: As I see it, the problem in drawing an analogy to the medical or the legal profession is that in each of those cases you have a professional organization, the law association or the medical association, of which the vast majority of the people in that profession would be members. They can purport with some legitimacy to speak for the members of that profession, although there certainly are individuals who are not members and who would take issue with that.

I accept a lot of your argument about the desirability of splitting these roles. It was not even spoken against by the president of APEO at the time your organization was founded. In fact, it was supported, as I read in the letter you quote from in the report.

What could we do in this legislation that would strengthen the role of a separate interest group and perhaps lead to making more of your professional engineers want to be members of such a group?

Dr. McNeice: Before I answer the question directly, I want to make a statement concerning the background to the question.

It may not be generally realized by the members of the committee that the engineering profession, as opposed to the medical and legal professions, has the majority of its members as employees. Let us say 80 per cent of engineers are employees.

Just the opposite is true for the other professions. Obviously many years ago the other two professions organized themselves for self-serving purposes. The engineers, because the majority of them were employees, did not do that. The licensing body continued to function and a few engineers wanted these things, so the association took on the services.

We are now at the point, and I think it is quite significant, where we can sit here today and say we have 3,200 voluntary professional engineers who have joined and supported our society. There are quite a large number of engineers now who really do want to have a separate, self-serving organization. That is why we formed in 1979, and that is why we are here today. I am confident that as things go on, we will improve in our services and also in our size, because the engineers will see the need.

To come back to your specific question, we are not here today to demand anything. We want to make this profession serve the public as strongly as possible and to reword and present a bill in which there is no possibility of a misinterpretation.

We want to remove the portions that can be interpreted as self-serving items, and some of them are direct, and provide wording throughout this bill such that anything that is written after the objects must follow in accordance with those objects--the regulations and the bylaws and anything else that is done, if you refer directly to the objects, and for no other purpose. From the legal point of view it is extremely important to put the qualifier in.

As this bill stands now, it does provide, and it will over the next decade if it stays like this, ample opportunity for expansion of the serving aspects of this licensing body. The fact that we have words like "not inconsistent"--perhaps it sounds rather trivial--means the association could form all kinds of other things and do all kinds of other things as long as they are not inconsistent with the objects. It does not mean it has to be consistent with the objects. That is the fundamental difference.

4 p.m.

What can we do to have a better self-serving organization for the engineers? Quite frankly, we can write the bill so that it limits it to the licensing aspect, protects the public and gives the association the full right, and we support that. We do not want any possibility of a loosely written act for our association. I am a member of the APEO and I want this to be strong and well written for the integrity of the profession in the eyes of the public. It is as simple as that. I think I have answered your question.

Mr. Gillies: I think you have and I thank you.

I have just a couple of specifics, and I am not talking about possibilities but the situation as it exists now. In two of your recommendations, you mentioned publications in sections 8 and 9, the capacity or power of the APEO to establish publications. Can you give the members of the committee an idea of what is being done now and what, if anything, you are seeing in the publications that you feel is inconsistent with the aims of a licensing body?

Dr. McNeice: Could I turn that over to Mr. Aktar to speak to what is available?

Mr. Aktar: At the moment, the association publishes one journal as I mentioned. It is very good, very glossy, very informative and it contains part of a project which gives information about council proceedings and disciplinary proceedings. Beyond that, it is journalism.

In the past, a libel suit was incurred with that. Some members do not like certain aspects of that journalism, whether it is the peace movement, nuclear war or anything of a political nature. Just to keep the integrity of that journal in the dimension of any publication, it is our view it would be best if that publication just zeroed in about the disciplinary hearings, council proceedings or other matters of interest which are under the act. Then it does not put the staff or other people in the embarrassing position of accommodating people who may have radical or other views and ask them if they will print that. It is just to give a sense of direction.

Mr. Gillies: Is there a reasonable amount of what you would consider political content in these journals?

Mr. Aktar: You can construe that from the way it is, but I think the main thing is you can save a lot of problems within the profession if that publication, just like other professions, legal and medical, has the privilege to proceed with the council's disciplinary hearings or other matters which are under this act. It does not become a journal, either political or anything else. It is just to give a clear direction and this can help a great deal.

Mr. Gillies: Very briefly, can you give us an idea of what the libel proceeding was about?

Mr. Aktar: This proceeding?

Mr. Gillies: The libel.

Mr. Aktar: A few years ago the letters to the editor column was used by some members, allegedly to libel some councillor who was running for election. The case was brought to the court but it was withdrawn.

Nevertheless, the staff was put in a very embarrassing position. Either they publish the letters or articles and they are damned, or they do not publish them and they are damned. This is the kind of situation which can arise. Currently, there is a debate going on about whether there should be nuclear war, disarmament, things like that. What we are saying is that if the direction is clear that the publication of the association will cover the matters under the act, then the staff can tell the people, "Look, if you have any political view, you can go to the public press, but do not come to us." At the moment they are obliged to satisfy any member who wishes to communicate his views on any subject.

Mr. Gillies: Through these publications, though, the association is not taking a stand on these issues, is it? It is just a forum to allow the various opinions of members to be heard.

Mr. Aktar: For example, again innocently and very honestly, three years ago the president of the association took a stand on the shortage of engineers, which was fine at that time perhaps. Things were different at that time. It was meant with good intentions. Yet now we are faced with unemployment and an oversupply of engineers. The licensing body should not be in that position. The point we are making is that you can save a lot of embarrassment by clearing the direction of what the publication of any licensing body should be.

Dr. McNeice: I would just like to add to that, first of all, in order to inject the proper wording again to make sure that those types of publications and what have you follow in accordance with the objects, you will see in the recommendations that we have again stated, "for no other purpose or object."

The main thing here, and what concerns the society, is what is the public's perception of these kinds of publications. Recently, there have been articles in there on not necessarily totally technical things, but technically related items. As I have indicated at the back, there is a multitude of organizations in which you can put that sort of thing.

When people start to see this, and they realize that the legislation has been written in order to protect the public and what have you, they start asking the question, "What is this association doing with its publications by expanding them to all these other things?" This question is going to be asked--there is no question about it--and it jeopardizes the very integrity of the profession.

Mr. J. A. Taylor: Just on this point, on publication, as I see your argument, your broad argument would appear to be that you subscribe to the philosophy and concept of a self-policing profession. That being so, you want to ensure that nothing undermines the integrity of that image which is projected to the public. I think you have made that point. Therefore, you want to be very meticulous in ensuring that anything that might come into conflict with that and be seen as self-serving as opposed to public serving should be eliminated, if I get what you are saying.

Dr. McNeice: Yes.

Mr. J. A. Taylor: I think the Attorney General mentioned image and the image of another profession, which some members here are members of, perhaps not being as good as the image of your profession, but I would think it would be important, if you are going to ensure public confidence, that you project a very strong and excellent image to the public.

If that is so, presumably there would have to be some capacity on the part of the regulating and licensing body to get that message across in terms of its function and to enhance its

image. If that is correct, then under this business of publication and the authority to publish, there surely must be some provision for publication. I notice in your main recommendations, at the bottom of page 5, you say "delete or modify." I would suggest to you that it might be more constructive to modify, so that whatever those grants are they are towards the reinforcement of an excellent public image rather than to delete that and not be able to have the association maintain the image it has.

4:10 p.m.

In other words, I am suggesting to you that it might be more in the interests of your profession in general and what you are advancing in terms of ensuring a self-policing profession that there be provision for grants, provided of course that they are specifically to advance the principles enunciated in the legislation.

Dr. McNeice: In the objects, right. I would agree with that, to modify it accordingly.

To get right back to your basic statement that the licensing body should publish and should be encouraged to publish material so as to illustrate to the public that it is doing a proper job and that the public is being strongly guarded by having good control over the profession and what have you, this should be done through a publication such as the Gazette, and it is being done very effectively. In fact, it makes rather good reading for the public to look at it when they publish items concerning those engineers who are taken to task or people who have been purporting to be engineers and the deliberations on those.

The publication of those are contained, and that is quite indicative of the fact that the association is protecting the public. That builds an image by those publications alone of what is going on.

The other thing, however, and this is why I say that this need not be in here, is the very object is in the bill. Paragraph 2(4)4, if you look at page 3 of the bill under additional objects, says: "To promote public awareness of the role of the association." Following that object, the association can publish all sorts of things associated with what it does, what its purpose is, what its objects are and how it functions so as to protect the public.

Any good writer could write some pretty good stuff to make some interesting reading there. I think there is ample opportunity, the objects are set, and the association has wide latitude in carrying out its conveyance, if you like, of its role and of the profession.

Mr. Gillies: If you can indulge a nonlawyer for a minute, perhaps I should ask the Attorney General this. Would the immunity and indemnity clauses under section 46 apply and extend to the publisher of the association's publication and the employees thereof?

Hon. Mr. McMurtry: I do not think it would extend. Are you suggesting in relation to a libel suit?

Mr. Gillies: Yes.

Hon. Mr. McMurtry: I would not have thought that would apply. I will take a look at it.

Mr. Gillies: I just wondered if that might be the case.

Hon. Mr. McMurtry: I would not have thought that the performance or intended performance of a duty or exercise of power under the act would provide some sort of immunity under existing libel and slander laws, for example, but we will take a look at that.

Mr. Gillies: Finally, I wondered if I might ask you to comment on the association's views on the wording in section 8, as to whether or not it might not be a little tighter or a little neater to replace "not inconsistent," with "consistent." Can you tell us what the ramifications of that might be from the ministry's point of view?

Hon. Mr. McMurtry: I have a little concern with it, but as far as the brief goes, we will take a very good look at all of the recommendations. I have no doubt the brief will provide a catalyst at the very least for some interesting discussion during clause-by-clause, which will not take place until March. At this point, we would just like to take a very good look at the brief.

Mr. MacQuarrie: I have an aversion to double negatives as well, but the phrase "not inconsistent with"--

Mr. T. P. Reid: How about Progressive Conservative?

Interjections.

Mr. MacQuarrie: He didn't do nothing.

The phrase "not inconsistent with," if my memory serves me correctly, runs through a whole raft of statutes and, I am sure, has been judicially interpreted from time to time. Possibly Mr. Fram could comment on that.

Mr. Fram: The difference between the two approaches is very large. "To be consistent with" is almost to be identical with. If you look, for example, at what organizations they might join, if you make the change it is far more limiting to the association. In developing the bill, we thought the association should be free, as are other associations, to benefit by getting views or participating in things.

For example, if an association in the United States is not a licensing or governing body, but a certifying body, is that consistent with the type of object? It may be an engineers' interest group, but there might be something arising out of being a member that is valuable in its service to the public and the kinds of understanding that might come out of that.

Similarly, we have already heard today that licensing in the United Kingdom is quite different from licensing here. Would that be consistent with the objects we have here or are they precluded? It gives rise in almost every action to a question of whether the association can do it or not. In terms of broadening service to the public and the ability of the association to reach out and stay alive in this world of changing technology in all sorts of fields, I would be loathe to see that kind of limitation.

Mr. MacQuarrie: I am inclined to share his view.

Dr. McNeice: I would like to ask Mr. Fram, if he feels that way, what is the purpose of writing the objects as we have them now in Bill 123?

Mr. Fram: For example, in developing an additional service, it is not the intention, as we heard this morning, of the Association of Professional Engineers of Ontario to provide additional services to the membership. Perhaps some limitation on the bylaw power in that respect should be carefully considered.

In other respects, for example, you have suggested the ability to make grants to encourage public information and interest in the past and present role of professional engineering in society. The Law Society of Upper Canada gave some money to participate with others in the production of a book of photographs of courthouses and other municipal buildings of historic interest in the province. That is the kind of thing the APEO in connection with professional engineering could not participate in, but it is an organization in society.

4:20 p.m.

You cannot be cut off from that society in my view. Their function is not to provide members' services. It is not to engage in self-serving of the professional engineer's interest. It is not to be a negotiating agent for a group of professional engineers. It has no intention, as far as we have heard and certainly in my dealings, and in the last 10 years no indication has been made, that it does any of those things that are clearly what we intend to constrain it to: the service of the public. But in all of those little areas where they have to be a functioning organization, the question is how much do you geld them.

Dr. McNeice: The point is that if you set objects in a bill, the purpose of those objects is to guide that organization in the conduct of its affairs. But what you have indicated to me now is that this organization, because of the words that are in there--"not inconsistent"--can engage in a lot of other things that may have nothing to do with those objects. Is that not a fact?

Mr. Fram: They will have to have something to do with them. "Not inconsistent" means--

Dr. McNeice: Not inconsistent.

Mr. Fram: That is right. They cannot be inconsistent with those objects.

Dr. McNeice: But that does not mean they have to be consistent, and that is my point.

Mr. Fram: That is right.

Dr. McNeice: So therefore you agree.

Mr. Fram: I agree that there is--

Dr. McNeice: You agree that they can do things outside it.

Mr. Fram: --difference between "consistent" and "not inconsistent." There is no question.

Dr. McNeice: They can do anything else they like, then, and that is the principal reason we are here. We do not want to jeopardize the integrity of the profession by any presumed view by the public by future activities of the association.

Mr. MacQuarrie: I think you might end up unduly constraining it, too.

Dr. McNeice: No, I submit the opposite, in fact. The objects are clearly written, they are succinct and they give sufficient latitude to do all the things that any licensing body would find it necessary to do in engineering to protect the public interest.

Mr. Renwick: I basically support the approach that is presented to us by this society and I do so without repeating at length what I said this morning on the question. In the way I perceive this professional association to have developed, the problems it has had, the extent of its membership and the diversity among the members, I think we have to do everything we can in this bill to provide the opportunity for the service function--that is, the personal function of serving its members--to be performed by an organization other than the Association of Professional Engineers of Ontario.

By including in the bill a number of the concerns that have been expressed in this brief we are in fact militating against the development of an organization outside on a voluntary basis that will have a clear responsibility for serving the private interests collectively of its members. I therefore can accept the thread of the argument and position that has been developed.

To take the one example, "not inconsistent with" is not just a question of a semantic distinction between "consistent with" or "not inconsistent with." It in fact removes from the governing body the obligation to ensure that what it is doing is consistent with the objects; it shifts the burden of that question to the outsider--that is, the member of the organization. You know as well as I do that a member of the organization is clearly helpless in dealing with that kind of question.

Certainly the thrust of the objects--the provision with respect to the natural person, the use of that phrase "not

inconsistent with," the double negative, which is a lawyer's delight when you are acting for a client but is inimical to the interests of persons who are not your clients--seems to me to have a built-in bias to maintaining the self-serving interests of the profession.

I could point, for example, to the ability to provide group insurance, employment advisory services, retirement savings plans, and so on. It is a very powerful instrument to maintain the self-serving interests of this association and to preclude the development of an organization such as the one before us now, the Canadian Society for Professional Engineers.

Mr. J. A. Taylor: In spite of the pronounced view of APEO that it does not want to be involved in these things but found itself involved in them, presumably the wording would now encourage an expansion of those services rather than a limitation of them, as I see it.

Mr. Renwick: I agree with that. We have a responsibility, in the light of McRuer and everybody else who speaks on these topics, to make certain that from now on the organization of APEO is limited as far as we can do it by the words "to the public interest." We have to let the other bodies, however they develop--if this body before us now is the one that ultimately flourishes, fine. That is its problem, what it can do to attract people, but we should not maintain here items that are inimical to that development. I feel very strongly about the principle involved.

I am not suggesting for a single moment there are not some analogies with my own profession. In my profession, for example, the Canadian Bar Association used to be a fairly effective spokesperson for the private interests of the members, but there is certainly agitation in the province within the legal profession and a new body has been formed, the Ontario Lawyers' Association. That shows a division. They did not think the bar association was active enough in promoting the interests of its members.

Then you get confusion with the Law Society of Upper Canada. Maybe I look at it from the wrong view. I was astounded when the Law Society of Upper Canada in its bulletin advised us it was seeking amendments to the act to provide for credit card billing for lawyers' accounts. I would have assumed that was not a public interest concern. I would have thought that was something that could legitimately be promoted by the bar association and that it was not proper for the law society to promote that.

Mr. T. P. Reid: If anybody has a credit limit that high anyway.

Mr. Renwick: As the Attorney General said, we can deal with these matters item by item as we come to the various clauses in the bill. The underlying thread of the principle that is being put before us in this brief is extremely important. As Mr. Taylor says, it does not appear to be at odds with what the professional association would prefer in any event, if I understood its

language this morning. So we have to curtail those self-interest provisions of this bill in so far as the APEO is concerned.

Mr. Chairman: There being no further questions, Dr. McNeice and gentlemen, I thank you for appearing before us this afternoon.

The fifth witnesses are the Consulting Engineers of Ontario, the Hamilton chapter, with George Schneider, vice-chairman, and J. Disher, chairman.

CONSULTING ENGINEERS OF ONTARIO

Mr. Disher: Mr. Chairman, I am Mr. Disher and this is Mr. Schneider. Our brief is fairly short. I will wait until it has been circulated.

The Hamilton chapter of the Consulting Engineers of Ontario supports Bill 123 with the following minor clarifications and adjustments which we sincerely believe would be in the best interests of the public and the profession.

4:30 p.m.

1. The Ontario Association of Architects and Association of Professional Engineers of Ontario joint agreement, a copy of which is attached to this submission, requires as a principle that the selection of an architect and an engineer, as prime consultants, should be left to the client.

Paragraph 12(6)1, which is on page 14 of Bill 123, should therefore be altered to reflect this principle by deleting the word "only" in the first part of the first sentence. The section then would conform to item 4(b) of the OAA-APEO joint agreement.

Paragraph 12(6)1 states, "Only an architect may prepare or provide a design for the construction, enlargement or alteration of a building." We believe it should not be confined to only an architect. A word of explanation on this particular point:

The design of buildings in general requires architectural input for the usage requirements, the appearance and interior treatments; structural engineering for structural elements; mechanical engineering for heating, air conditioning, plumbing, etc.; electrical engineering for lighting, heating, wiring, alarm systems, etc. In the average general-purpose office building the proportion of work in these areas usually forms the following proportion of the total design cost: architectural 35 per cent; engineering 65 per cent, of which engineering would be broken down into structural 20 per cent; mechanical 25 per cent; electrical 20 per cent.

This proportion varies depending on the type of building. For example, in an industrial building where heavy foundations, heavy equipment, etc., are involved, this proportion would be architectural zero to probably five per cent at the most; engineering would be 95 per cent.

For smaller buildings, that is, those referred to in paragraph 12(6)1, the proportion of engineering does not change substantially but is less complicated. In many cases, it is as much the application of building code requirements as it is pure engineering.

Exposure to harm to the public through structural collapse, electrical fire, or explosions of the heating system, is diminished through the application of minimum standards. The Ontario Building Code which is an Ontario regulation--I believe there is a new issue this year, 1983--now requires the design drawings of buildings in this category to be stamped by either an engineer or an architect.

Most municipal bylaws have the same requirement. Many municipalities require the design and drawings of buildings smaller than the 600 square metres, also to be stamped by an architect or engineer. In other words, there are in the building code and also in municipal bylaws, at present rules governing the stamping or the submission of drawings for approvals. These include both architects and engineers, in many cases if not all.

It has been agreed by the OAA and the APEO that this category of building can be designed by an architect without the requirement of services of an engineer, if you read the joint agreement. As we see it, it was not intended to preclude the building being designed by an engineer with the services of an architect for the architectural portions of the work. Nor was it intended that the client could not hire an engineer as a prime consultant.

2. One of the purposes of Bill 123 is for the protection of the public. In order to reflect this purpose, we recommend the following be added to paragraphs 12(6)4 and 12(6)5:

"iii. providing always that the safety of persons occupying, or the public, and the strength and safety of the building is not an issue."

3. In keeping with the general wording of the bill, we recommend that the wording of paragraph 12(6)8 be reversed to read, "A professional engineer or an architect."

4. The definition of general certificate of authorization and standard certificate of authorization and who should use each type needs clarification to understand subsection 15(2).

5. The members of the joint practice board should hold a general certificate of authorization or be designated in the certificate of a company holding a general certificate of authorization. We recommend that subsection 48(1) be expanded to reflect this requirement.

6. Bill 122, An Act to revise the Architects Act, carries similar sections to those referred to herein. We recommend that the comparable sections in Bill 122 be adjusted in accordance with these recommendations.

That completes our submission.

Mr. Chairman: Thank you. Are there any questions?

Mr. Renwick: I would like the minister or Mr. Fram to comment on the very first one.

Hon. Mr. McMurtry: Unfortunately we did not see this brief until a few moments ago. There may be one or two matters. I do not know whether the APEO would like to comment on any of these matters. There would appear at first blush to be some difficulty with one. Perhaps on one or two others we might be able to accomplish something. This also involves the Ontario Association of Architects.

Mr. Renwick: Perhaps we can wait until the point when we are dealing with the clause-by-clause provision.

Mr. T. P. Reid: Excuse me. It is my understanding that the figures were agreed to by the joint committee. You are saying you do not agree with the figures as expressed.

Mr. Disher: The figures?

Mr. T. P. Reid: In paragraph 12(6)1, I understood these to be carving up the pie so to speak. Up to a certain level the architects would do, or up to a certain extent the engineers and then the architects would get into the act. I understood this was an agreement of the architects and engineers.

Mr. Disher: If we read the OAA-APEO joint agreement, the wording is slightly different from what is in the documents here.

Mr. Fram: Perhaps I can cast a little light on this. A lot of what was in the agreement has gone through a great deal of refinement since 1979 and some of these things are as a result of things that have occurred between the two associations, in terms of working out the agreement, which I do not really understand, such as the "only" for example.

Essentially, what I understand is the relationship between the prime consultant--that is, anybody can be a prime consultant; the provision in the rules with respect to prime consultancy is there to make sure that consulting engineers can go out to clients and say, "Look, we can be your prime consultant and have the architect as a sub in doing any particular project."

Indeed, the words will be reversed. There will be an amendment to reverse the words in the Engineers Act so that it is "professional engineer or architect." We reversed all the others between the discussion draft but missed that one.

4:40 p.m.

On the word "only," I do not know whether there is any significance to it except that indeed the designer of a residence of that size must be an architect. It does not contradict the idea that someone wanting to have a huge house built can go to a

consulting engineer, and he can have an architect provide the drawings, the design for the house, with the structural work or mechanical or electrical work being done by engineers. I think the "only" may be a vestige of something else, but I am not sure of that.

In essence, what we are saying throughout these rules is this is the dividing line between architects and engineers. We would assume that since we have licensed architects and licensed engineers, an architect will not exceed the bounds of his particular competence in the same way a chemical engineer will not do structural engineering.

I do not think there is any need for a provision saying that, since if he does exceed those limits, the answer is quite clear that he will not be an architect or an engineer very long. That is why that provision is really unnecessary.

On the definition of general certificate of authorization, I agree. We started out with classes. I think it will become clear. Right now it is a little vague in the two provisions with the "general" and the "standard." We tried to come up with two words that had no implication of one being better than the other, so we came up with two words, neither of which I can remember. "General" and "standard" are so blah.

I think the regulations will make it clear to whoever is applying to the Association of Professional Engineers of Ontario for a certificate exactly which one he should be applying for.

On the fifth one, it is our desire not to constrain the APEO in appointing its members to the joint practices board. I am quite sure it would appoint people who would know best that aspect of practice; that is, consulting engineers. I do not think it is necessary to have that kind of constraint in the bill.

Indeed, any change we would make to these provisions would have to be made to the Architects Act, save and except that we will not reverse architect and professional engineer in the rules as they appear in the Architects Act.

GEORGE SCHNEIDER

Mr. Schneider: Mr. Chairman and committee members, I have submitted a separate brief which in most instances is identical. Being a sole practitioner, one of these rare beasts who does practise architecture, I thought it incumbent on me perhaps to give some background.

Mr. Chairman: Excuse me. Would you wait one minute while the clerk distributes it to the committee. We do not seem to have your brief in front of us.

Mr. Schneider: I thought they were pinned together.

Mr. Chairman: We only have the one.

Interjection.

Mr. Schneider: This is my brief. There is some confusion because my son is apparently representing some other association. His initial is also "G." He is Greg and I am George.

Mr. Chairman: You may continue, sir.

Mr. Schneider: Thank you. As I say in my opening remarks here, I am a consulting engineer, a sole practitioner, and I have practised architecture for over 30 years. You may wonder how I got to do that. It is actually part of the story of why engineers do practise architecture.

I studied in high school in Saskatchewan at Balfour Tech, which, in those days at least, was comparable to Ryerson and where we also had our high school. I studied architecture there. Then I went on to McGill after several years in the war, and I wanted to get a licence to practise.

The dean at McGill then, who had the time and the inclination to interview each freshman, advised me to take engineering. From what he had seen of my material and my experience he said I had a native talent in architecture and I could serve the public, the profession and myself much better by knowing both professions.

That is one way to become a person practising architecture. There are others, and one of the others is that quite a few engineers have been employed in the past, and no doubt will continue to be employed, in architectural firms, especially in structural work. As it happens, there may not always be engineering work to do, so they are put to work doing architectural work. If they have the native talent anyway, it does not take very long to become a very good architect.

The last, perhaps, of the important ways of becoming proficient in architecture is in smaller urban communities that are not large enough to sustain an architectural firm but may have a town engineer or a county engineer. If someone wants an addition built to a store, or a kitchen for the community arena, or some such thing, he goes to the engineer, because it is efficient and far less costly than importing someone who might have to drive a long distance. So gradually some of these people then end up doing architectural work. That has been the past.

The new act will kill that. There will be no more metamorphoses of engineers into architects. Do you really think that is good as long as they are proficient and able and as long as our association diligently looks at those of us who practise architecture?

In the past they have summonsed people and charged them in some cases, and I think that would carry on. Our association is very diligent in that field, and I am pretty sure it will continue to be so if engineers are given the opportunity to become proficient in architecture.

They have a grandfather clause in the Architects Act, but that goes only for grandfathers, perhaps like me, and even they

have no assurance. They hate me because I have designed some beautiful churches both here and in the United States, and they may decide not to give me a licence. Are you going to kill me and the practice I have established over these long years?

4:50 p.m.

Regarding the point that was made about the word "only," Mr. Fram no doubt is a very good lawyer. Incidentally, part of my practice has been as a consultant to lawyers in court cases where buildings were involved.

I am afraid of such things as "only." The judge will say, "'Only' means 'only,'" and afterwards, well, you can become a private consultant. The restriction of the word "only" is still there, and I feel it may only give rise to further court battles, and in this case the engineers will be on the losing side, from my limited legal experience.

The point that I think cannot be overstressed is about the safety to the public. Maybe I should have prefixed my remarks, my brief theory. I draw your attention to the bill, page 2:

"1(m) 'practice of professional engineering' means any act of designing, composing of plans and specifications, evaluating, advising, reporting, directing or supervising wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles."

Apartment buildings, even if they are limited to three storeys, are generally now built with concrete floors, earthquake resistant walls, electrical and mechanical installations, as Mr. Disher has pointed out, things that are very much concerned with the public safety and wellbeing.

If you look at the practice of architecture, page 2 of Bill 122, clause 1(s), you do not find that in there. As members of the Legislature looking after the public interest, you must realize this bill was drawn up with the approval of the architects, and I am sure it is not just a matter of omission that that is not in there, because it is well known. If you look at building officials in the municipalities, those who look at plan specifications before a building permit is given are mostly engineers, because we are the ones whose hearts and souls are directed at looking after the public's interest.

If you can say to an architect, "You do not need an engineer as long as it is only a three-storey apartment building," what happens? Are you looking after the public interest? I have that additional point in my submission that I think it should be mandatory where it is an issue. If it is a good choice, a three-storey building, then goodness knows there is not much problem, but nowadays buildings are not that. Changing technology is not going to get simpler; it is going to get more complicated in terms of materials.

Mr. Disher pointed out the present ratio of engineering

input to architectural input. Through the years it has become higher and higher, because of the technology.

Who knows if it was an architect who designed that big building in Chicago where, every time there is a windstorm, they have to block up all the streets around because of flying glass--the glass comes out. The glass was not strong enough; it was not thick enough, too flexible. The wind can suck it right out of the frame.

You must be concerned with public safety. If you enact these acts as they are written at present, you are not doing your duty. I think engineers have a place, whether a three-storey building or a 100-storey building is involved.

The final concern is grandfathering. I am very leery of architects because they have sued us right, left and centre in the past and lost consistently. That is why this act is here, to give them a clear-cut division.

One of the members mentioned that our agreement was to cut up the pie. I do not think you can cut up the public's welfare in any shape or form, and say: "All right, we will let you do it. You do not have any concern for the public and by the act you are not responsible for it, but we will give it to you anyway." That is not our attitude and we have certainly never been consulted.

One of our biggest concerns has been with our own association. I am not trying to say, "Let the consulting engineers have a separate association." We do not want to fracture the engineering profession. I think it has worked well in the past, but understandably, with 50,000 engineers and only about 1,000 consultants, you can see where the big concern lies. As a matter of fact, I do not think they would hesitate, at least they did not at the last provincial annual meeting.

The engineers' section pertaining to this interface with architects was written by the architects, and they just copied it and even forgot to put the word "engineer" before the word "architect" until it was pointed out to them. That is just like telling Little Red Riding Hood, "Go and ask the wolf to find out how to go through the woods."

They did it only to suit themselves. We were not asked. We were given the draft bill two weeks before. They said, "You have two weeks." How can you get together with others? After all, we have work to do, too, especially in the smaller communities. That is why perhaps people in Hamilton are concerned because there tend to be smaller firms there than in Toronto.

Even the big consulting firms have no grasp of what the grass roots are all about. Big firms have their departments, they hire specialists, architects, etc., so there is no problem. Smaller people do have a problem. That is why I am appealing to you on behalf of the small professional. They are the ones who are going to be really concerned with these problems.

I might add one point I have down in my notes. I know that

in the past you have passed bills and, under promulgation, you have deleted several points to be promulgated later on. If you decide in your wisdom to pass these two bills in whatever form they take, I urge you to leave out section 11 of Bill 122 and section 12 of Bill 123 for at least a year to see how this business, this grandfathering, works out. I would love to see whether the architects are very serious.

Mr. Chairman: Are there any questions of the witness or any comments from the ministry?

Mr. T. P. Reid: Mr. Schneider has raised a concern that he, as an individual, is going to lose out severely under--

Mr. Schneider: Completely. I cannot contribute any more; that is for certain.

Mr. T. P. Reid: Completely. I presume that, among other things, we are here to protect the individual in these matters. I would like to hear from Mr. Fram or the Attorney General as to their views on what he said.

Hon. Mr. McMurtry: I am confident this joint practice board will act responsibly and deal with this gentleman's concerns. I say with the greatest respect to him, I think he may be a little premature in attributing bad faith to that board. It will be made up of an equal number of engineers and architects, as I understand it, with a neutral chairman.

This is obviously a difficult issue about which no one can be an absolutist. No one claims perfection for this agreement between the engineers and the architects but it, in effect, has the potential to end literally years of wrangling and confusion. Frankly, the agreement that was reached was one that nobody thought was possible, given some of the traditional rivalries and other modest tensions that may have existed.

I would like Mr. Fram perhaps to expand a little on the really quite incredible process that has gone into this, the fact that we have legislation that is supported by both the Association of Professional Engineers of Ontario, as we have already heard, and by the Ontario Association of Architects.

I recognize that the associations support it. We have never deluded ourselves into thinking that every member would necessarily support it. I think this is as good a compromise as will ever be established.

What this very qualified gentleman is proposing would be to dismantle the core of the compromise. I understand his point of view and I am not suggesting he is alone in his point of view, but that is what is being proposed.

I think it might be helpful if Mr. Fram were to expand a little on the elaborate process that has involved all the concerned professionals over many years.

5 p.m.

Mr. Fram: The agreement is not only an agreement between the OAA and the APEO, it is an accommodation of the general contractors, the Urban Development Institute and the Housing and Urban Development Association of Canada. There are numerous interests that have had their effect on the development of the particular compromise.

There have been disagreements within disagreements, from the point of the general principle that architects should do architecture and professional engineers should do professional engineering. Just for example, on the issue of grandfathering it would be nice to be able to put in a provision that, by itself, would take into account the fact that certain engineers have done architecture and certain architects have done engineering, but there are engineers and there are engineers.

There are engineers who have never in their lives considered a building, those who are chemical engineers or mechanical engineers, or who are dealing with industrial engineering or all types of electrical work that have nothing to do with architecture. There was no simple way to create a grandfathering provision which would take into account those kinds of things without having some of kind of screening device. The screening device that was struck was a committee composed of an equal number of architects and engineers with a neutral chairman.

Although the terms of reference are not in the act, I understand that a number of years of having earned a livelihood at architecture and a competence in architecture are required. If those things are shown to the joint practices board then the recommendation will go to the council to grant a licence in architecture.

We have to assume, given the years of anguish there have been in trying to draw these divisions, that not only the ordinary good sense of the associations will be called upon but, because of a lack of good faith, the whole thing will go down the tubes no matter what is written on paper.

I think we have to have a great deal of faith and, of course, if that faith is not justified the bills are still within reach of the Legislature.

Mr. Chairman: Thank you, Mr. Fram. Thank you, gentlemen both, for being with us to bring your concerns to the committee.

This brings to a conclusion this afternoon's sitting of the committee. Meeting recessed until eight o'clock this evening.

The committee recessed at 5:03 p.m.

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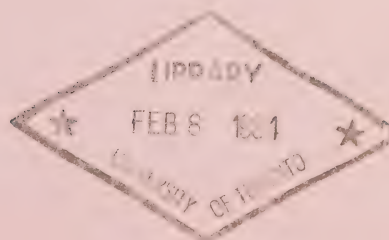
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT

BILL 123, PROFESSIONAL ENGINEERS ACT

TUESDAY, JANUARY 31, 1984

Evening sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
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MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

MacQuarrie R. W., Parliamentary Assistant to the Attorney General
(Carleton East PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

Witnesses:

Quinn, P.
Stewart, R. P.
Sablatnig, A. A.
Zakaria, M. B.

From the Association of Professional Engineers of Ontario:

Moull, C. J., President
Wardell, A. W., Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 31, 1984

The committee resumed at 8 p.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT
(continued)

Resuming consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

PATRICK QUINN

Mr. Chairman: I call the committee to order. I see a quorum. We will ask the sixth witness, Mr. Patrick Quinn, to come to the table. Do you have an oral presentation?

Mr. Quinn: Yes, I do, Mr. Chairman.

Mr. Chairman: Fine. You may proceed whenever you are ready.

Mr. Mitchell: Mr. Chairman, might I ask Mr. Quinn if he is representing himself or an organization.

Mr. Quinn: I am representing myself.

My name is Pat Quinn. I am not a hockey player, although I feel a little vulnerable, sort of like a Toronto Maple Leafs goal tender. I would like to give you a little of my personal background because I think it is important so what I have to say is seen in a particular light.

I have been in Canada since 1956 and I have been practising engineering as a consulting engineer since 1970. I was in Quebec between 1963 and 1970 and I was elected to the council of the Order of Engineers of Quebec. I served for a number of years as chairman of the juridical committee and on various other committees, including being liaison counsellor to the board of examiners. I was also a director of the Federation of Catholic Charities.

In 1979 I was appointed to the professional practice committee of the Association of Professional Engineers of Ontario. I served on that committee for four years, one year as vice-chairman and one year as chairman. I think I have paid my dues, as it were.

Mr. MacQuarrie: How long have you been a member of APEO?

Mr. Quinn: I have been a member of APEO since 1963.

APEO has indicated its support for this bill. I am sorry to say I cannot support my association in this matter. I acknowledge there are honest differences of opinion and perceptions involved, so nothing I say is meant with any disrespect to either the goodwill or the good intentions of officers or staff of the association. I have worked with them. I salute their diligence and their hard work. It might be worth while to explore why we see things differently and, indeed, how natural this may be.

In essence, APEO can be seen to be the police, the prosecutor, the judge and even the beneficiary of fines that are levied. It is easy to see how the governing body and staff tend to direct a large part of their attention to enforcement. Ask a policeman if he would like means to make it easier for him to enforce the law and it is human nature that he would tend to say yes.

There is another point I would like to make before I get into specifics. It has to do with the model act sort of nature of the discussions I have heard. This act has to be all things to all people. It really came about because of a jurisdictional dispute or a territorial dispute, but it went into professional regulation which studied architecture, engineering, law and accountancy.

When you get into a model act, it is like the operating manual for a profession. If you take the four professions I have just mentioned, it is almost analogous to a bulldozer, a bus, an aircraft and a space shuttle. They are all and they all have things in common, but obviously if you try to write an operating manual that covers all four of them you are bound to get into some difficulties. If you try to treat them all in the same way, irregularities in application are bound to take place.

Whereas a lawyer, for instance, may deal mainly with the public, who are unsophisticated and even slightly intimidated in the dealing and the relationship, so that the public needs protection, engineers in practice deal with a very sophisticated and usually powerful public. In one case the public needs protection and in the other it may be that the professional needs protection.

In my own experience, it has usually been the professional who needs protection. The professional in this case is part of the public. We are 50,000 members; we have at our disposal considerable public clout; we are a large block of people. Later on I am going to deal with the rights that have been taken away from that large block of people, and I would just like that to be kept in mind.

To get down to specifics, I have been a member of the professional practice committee since 1979. The professional practice committee is a broad-based committee. It used to be called the consulting practice committee. It is composed of about 10 to 12 members; I am not sure of the actual number. But a real effort has been made in the time I have been there to make it representative of the profession at large. It is meant to have on

it users, clients, consultants, employee engineers and so forth. It is meant to be representative, and when it has a point of view, it seems to me it is a point of view that should be dealt with very seriously.

Because of my experience in Quebec and because I saw what took place when the professions act was put in place in Quebec, when the professions gave up certain things to co-operate with the government and eventually found themselves in bed with a very large elephant, I must admit I have always been disquieted by the way things have gone there.

I have an office in Montreal, an office in Toronto and several offices out west, and I can see how the professions are practised in various jurisdictions. I want to say that, without the sweeping changes that were brought in in Quebec, the Ontario jurisdiction works very well. I can now see a difference in quality because Ontario does not have some of the draconian provisions that are available in Quebec.

In any event, because of that background and concern, a number of times in the professional practice committee I raised with some force my concerns about the act and how it was coming along and I followed the various discussions that went into making up this book. On at least three occasions the professional practice committee asked council to take notice of what it had to say. On two occasions the president of APEO came to listen to us and on one occasion he received a letter from us.

8:10 p.m.

I would like to quote to you from several of the documents that passed back and forth. There is no date on the first document, but I believe it was in early 1983. It is a document to the council of the Association of Professional Engineers of Ontario. It is the report of the professional practice committee, which at that time was under the chairmanship of Thomas W. Bain. It had to do with the revised 1983 Professional Engineers Act discussion draft.

"The professional practice committee has reviewed the revised 1983 Professional Engineers Act discussion draft both in general and in particular those items which we believe relate to professional practice. Although we find the draft well prepared and presented for discussion, we find the limited time available for discussion unreasonable and unfair for a document of this importance to the membership. Furthermore, we feel that the rather unfortunate presentation of the discussion draft, with a plain white cover and distributed by third-class bulk mail, will not draw the attention of the membership and generate the discussion needed."

This is the document that came into my mailbox. I think the presentation of it is significant.

"Our examination of the draft has raised the following questions" and I will not quote all of them--others will take care

of some of the items--but I will quote the ones I would like to address tonight. The document is obviously available. Re the regulations--at that time it was 7, 1, 12, 22, 23 and 25, and they are not important now because they are renumbered--the committee said:

"We are against mandatory professional liability insurance for all engineers, except those dealing with major projects where the safety of the public is at risk. We feel that compulsory professional liability insurance would be a hardship for the employee engineer or an engineer doing small projects on an occasional basis. These engineers should be exempted. We also see a system where exemption is difficult to administer and feel that professional liability insurance is best handled on a company basis, as it is done presently, rather than on an individual basis.

"Re the registrar's investigation," which was item 33 at that time, "we are absolutely against introduction of inspection of a professional engineering practice. A professional engineer should not be forced to waive some of his rights as a citizen of Canada to practise professional engineering or offer professional engineering services. This will establish an adversary relationship between the association and its membership. It will prompt engineers to institute schemes to circumvent potential inspection, which in the long run will not be in the public interest. Out-of-province engineers will be immune from inspection due to lack of jurisdiction. Inspection of practice did not work in Quebec and will not work in Ontario. Furthermore, it is unnecessary. It is the job of courts and the police and no one else."

"Re item 34," as it was at that time, "it seems unlikely that an insurer would be willing to release claims information to a third party. Even if arrangements were made to do this in Ontario, out-of-province engineers would not be subject to this arrangement. Again, the professional engineer should not have to waive his rights of privacy of information to practise professional engineering or offer professional engineering services. Furthermore, we view this as an unnecessary power for the registrar. If this information is really needed, it should be obtained through the courts."

There was a subscript which had to do with what I mentioned earlier, the relationship between staff and membership. It said: "For many years there has been an excellent relationship between council staff and membership of our association, one that we have all enjoyed, benefit from and can be proud to be part of. Let us not place this harmony in jeopardy by not properly discussing our new act and setting up unnecessary complications and potentially adverse relationships."

That comment was put in there because there was a feeling that staff was not listening to the professional practice committee and that due consideration to very reasonable concerns was not being shown.

Later on in the same year, on October 25, 1983, the next chairman of the professional practice committee, A. L. Atkinson, wrote to Mr. Moull as follows:

"Re: The Professional Engineers Act, October 25, 1983.

"The professional practice committee of APEO has held many hours of discussion on our draft act since early May this year, both in the matter of regulations required under this act and on the act itself.

"We have previously reported our comments and recommendations to council at its 290th special meeting and have over the last month prepared drafts of various regulations for submission to the legislation committee. We are taking the liberty of writing directly to you at this time to report on three resolutions of our committee.

"We understand that it may be too late to address this matter directly to council for consideration at your October meeting. It should be noted that the first two resolutions were first made at our September 20, 1983, meeting. However, we were discouraged from reporting to council by staff of the AEPO who felt the resolutions to be inappropriate.

"At our meeting of October 18, 1983, there was unanimous consent or agreement that we report to you the following resolutions." I think that is very important because there was a very detailed debate and long discussion. At the end, it was unanimous. There was no single person against it. I have already explained how broadly based that particular committee was.

"1. Resolved that the committee chairman draft a letter to the president and council recommending that the extensive powers granted to the registrar to enter and search an engineer's business premises be granted only with the authorization of council or a committee of council and after having obtained a court order.

"2. Resolved that this committee recommend to the AEPO council that all significant changes proposed in this act and regulations be highlighted and discussed in the next issue of Dimensions.

It goes on to say, as an explanation: "We would like to offer a few points of explanation.

"Resolution 1: We believe that granting of such powers of search and seizure to the registrar is contrary to the Charter of Rights and Freedoms and to the general trend of society to demand accountability and protection from unwarranted intrusion into private affairs. Some members believe their defence of such an action would be to lock the door to the investigators and seek a court injunction preventing the association from conducting the investigation.

"Our committee believes it would be preferable if the onus were on the registrar to establish the reasonable and probable grounds in a court after consultation with council or its committees.

"Resolution 2: We are concerned that there was initially insufficient time for the general membership to study and comment on the draft act, and although there has, in fact, been more time, the association has not adequately explained to its members the extent and implications of the proposed changes."

That is very true, because some of the things which take away our civil rights or liberties are not even highlighted in the beginning of this part, which talks about the changes in the act. We talk about mediation committees and about disciplinary committees and so on. We do not talk about the registrar's rights to come and search our premises.

"We had considered requesting a referendum on the key issues. However, we realized this would be costly and time-consuming." We were constantly under this gun of time. We do not have time to do this. We do not have to do that. This is all we can get. "To effectively represent the views of its members, we believe council must make every effort to solicit those views.

"Resolution 3: We believe that AEPO should not intervene in the business arrangements of its members. If the issue is related to quality of service or competence, it will be dealt with by the complaints committee. Arbitration can be provided by other means and probably with more credibility to the public. We also believe that the cost of such a service, which benefits mainly those in private practice, should not be borne by the association but by the participants in the mediation." That has to do with the mediation committee.

"We thank you for this opportunity to submit our views."

Mr. Atkinson had a reply from Mr. Moull, and I would like to quote that as well. It is dated November 22, dictated November 17, and is to A. L. Atkinson, chairman, professional practice committee.

8:20 p.m.

"Thank you for your letter of October 25 to acquaint me with resolutions made by the professional practice committee. I would like to comment first on the resolutions dealing with specific sections in the new act.

"The investigative powers given to the association are intended to permit acquisition of matters of fact, design drawings and specifications and other information pertinent to proper investigation of a formal complaint against a member." That is not what it says in the act.

"The policy development division of the Ministry of the Attorney General, which introduced this section, does not consider the power to be either unwarranted intrusion or to relate to private affairs.

"Since no investigation will be initiated without a complaint being laid"--that is not what it says in the act; it says the registrar on reasonable grounds can do these things--"and on reasonable and probable grounds of professional misconduct or incompetence, an investigation will deal with professional matters which are of concern to the public interest.

"Council initially expressed some concern about possible witchhunts but is satisfied that adequate protection against such actions has been provided." I have not found them.

"With regard to fees mediation, the association has repeatedly resisted this requirement and, in the event the policy development division insisted on its inclusion, requested that all costs should be borne by the party seeking mediation. The same applies to an arbitration. To date we have not been successful in either effort but are still trying.

"Your committee's concern expressed in resolution 2 is somewhat surprising. Not only were all members invited to comment on the draft act, but also the 42 chapters and all special interest groups among the membership. In the six months since distribution of the draft, no more than one quarter of one per cent of members have provided comment."

That may be true. The point that the professional practice committee was making was that there were very serious subjects to be dealt with and they should not be sent out in plain white wrapping. There should be some effort to draw to the attention of the 50,000 members what it is that is taking place.

That is out of general items and correspondence which I wanted to deal with. Now I would like to just put my own feelings into place.

Under fees mediation, I think the objection has been adequately expressed, and probably there will be other people who will express objection as well.

Under compulsory insurance, I would just like to point out what the authors of Professional Regulation, after four years of study, had to say about insurance. "Insurance exists primarily for the benefit of the insured rather than the client or third party. This is so at least in the absence of evidence that clients or third parties who have obtained judgements in civil liability suits against professionals are unable to enforce these judgements in any significant number of places because the defendant is judgment-proof. We know of no such evidence, and it is difficult therefore to insist on that account that professions take out such insurance."

In another section it says "The desirability of mandatory errors and omission insurance requirements as a condition of the right to practise, at least where the professions themselves have not so elected"--that is to say accounting, architecture and engineering--"has not been clearly established."

It also talks about claims and it says, "In professional engineering, about 50 written complaints are received a year, of which about one third raise issues of professional competence. Of the 36 competency-related complaints considered by the staff and by the practice and ethics committee of the APEO between August 1975 and March 1978, 12 came from other engineers, eight from the APEO staff, six from clients, six from government departments or agencies and four from other sources."

On the question of compulsory insurance, it seems to me we might listen to the Ann Landers' motto that says, "If it ain't broke, don't fix it." There is no compelling evidence that compulsory insurance need be mandatory.

Under insurance information, I have already quoted from several of the expressions of the professional practice committee. It seems to me that the rights of the individuals should receive tremendous concern today. To have a situation where one might be in a claim or a potential claim or what have you and be required to give up information without any redress does not make sense, but I believe this will be dealt with by the consulting engineers group.

As to the registrar's investigation, this to me is the most serious concern I have. It is the most dangerous in a social context, as it gives sweeping powers of investigation to the registrar of APEO or his appointee without any prerequisites. No prerequisites have been talked about in the other correspondence. An individual, because that is what the registrar is--this year it is Mr. Wardell, who may be a very nice gentleman, but who knows who the registrar will be next year?--in any event, an individual is granted, on his belief only of reasonable and probable grounds, the power to enter private premises, to search and to seize property. Although the individual whose privacy is being invaded is not required to be given either a notice or an explanation, any obstruction is classified as an offence. Just to stop someone from invading your privacy is an offence under subsection 41(4) of the act.

Further, under section 46 of the act the registrar or his appointees are immune from proceedings for damages they may cause. You cannot sue the registrar if he happens to destroy your practice and your livelihood. Even in criminal law this would not be acceptable. I live in Mississauga. If Al Capone was living next door to me and the police chief thought he was doing something illegal in his house, he could not just walk up on reasonable and probable grounds and insist on going into his house and taking out his papers and so on. I assure you I am no Al Capone, and I do not see why I should have any fewer rights than Al Capone. Why should someone have the right to walk into my premises and almost close me down?

No negotiator I know of has been empowered by membership of APEO to trade away that particular right. APEO says it is talking for all its members, but it has never put this out to a referendum. Under the old act, even a change in the bylaws required that it go out to a referendum. This has not happened at

all with any of these clauses. I would be much more sympathetic to the claim that they have spent \$250,000 to inform the membership if, along with it, there was some counter as to how the membership had informed council and its governing body.

As I have said earlier on at least three occasions, the broad-based professional practice committee of APEO has notified the president--in fact, three successive presidents--of its unanimous objection to this provision of the act and has asked that it be specifically brought to the members' attention and that the members' views be effectively represented to the Attorney General.

In the present climate of concern over the abuse of bureaucratic power, the perceived violations of personal freedoms, the individual's vulnerability and inability to deal with discretionary powers exercised against him or her by officials, if these provisions are passed into law, then truly Orwell's 1984 is with us.

Mr. Moull is wrong when he states there is a requirement for a formal complaint. A friend of mine who called me yesterday because he knew I was coming to speak to this committee asked me: "Why are you worried about this? This is for the bad guys." I have not lived all that long, but I remember who Mr. Nixon in the United States thought were the bad guys. I remember in the apprehended insurrection in Canada here--I still do not even know what the hell that means--who Mr. Trudeau thought were the bad guys, and I remember before that who Mr. McCarthy thought were the bad guys. The fact is you have to accord to everybody basic rights and civil liberties.

8:30 p.m.

Mr. Chairman: Mr. Quinn, you are running out of time.

Mr. Quinn: You caught me at the end of my rhetoric.

My friend who called made a point, which was also made by Mr. Moull in his letter, and that was that these powers would be exercised only under counsel's instructions. My answer to that is, write it into the act and then we will deal with what we are talking about in the act.

Better still, I believe there is no requirement, no compelling reason for that clause of the act. There is a complaints committee and a disciplinary committee. There is a mediation committee. There is the normal redress of the courts in civil and criminal circumstances. That portion should be washed out. Freedom is a precious and fragile thing. You do not lose it in one great gulp; you lose it by inches.

Recently, there was a newspaper article which talked about intrusions into personal freedoms coming from various authorities. I suggest this is one of the inches we should do without.

Mr. T. P. Reid: Mr. Quinn, I recall you began by saying you were here on your own behalf. Is that correct?

Mr. Quinn: I have not solicited anyone--

Mr. T. P. Reid: All right, but you are not here on behalf the group of which you were a member, the 12-member body--

Mr. Quinn: No. I hoped that they would express--

Mr. T. P. Reid: You and others put us in a difficult position, which is this: We have a professional body that is duly elected, presumably representing the 50,000-odd people who have come here saying they are in favour of this act. You are saying that you as an individual do not agree with it.

I have a bias towards some of the things you have said, but as legislators, we do not go out--Mr. Davis, of course, goes out and takes a poll before he does anything but that is another story. Generally, we do not take a referendum on each and every bill that comes before the Legislature. You are telling us we should listen to you rather than the duly elected body representing, presumably, the bulk of engineers. How do we deal with it?

Mr. Quinn: I am sure the members of this committee listen to what is offered. I started off by trying to establish that I am no crackpot or someone outside the mainstream of the profession. I tried to develop a case. I could have gone out and got petitions and so on. I tried not to do that. I tried just to establish a case on its merits. I have introduced some of the background which I think is worth while for you to consider. In the end, to some extent, I have to trust your judgement, although you are not really the court of last resort. The court of last resort is the public. If the 50,000 members agree with me rather than with the other presentation, they have some redress as well.

Mr. T. P. Reid: To be very blunt, we are your court of last resort because, once this bill becomes law, it is going to be law for some time until some other government changes it. You are telling us, in effect, that you do not agree with the professional organization that agrees with it. You are entitled to that. The problem we have is, do we listen to the group that supposedly represents the 50,000 members or do we listen to you? Let us go one step beyond that. Are you saying you were satisfied with the act as it was or is before this bill was changed?

Mr. Quinn: Absolutely.

Mr. T. P. Reid: You see no problems with that act.

Mr. Quinn: It has worked in all the years of my practice. I do not think we have suffered in any way because of it. The only problem was this continuing territorial argument between ourselves and the architects, which once again involved probably a few members.

Mr. T. P. Reid: Let me ask you this question. I have been sitting here all day and I have read all this stuff. It really concerns me that the Legislature and we as members should be trying to straighten out a jurisdictional power struggle between the architects and the engineers. Frankly, in 17 years in the Legislature I cannot remember going through this kind of exercise.

That said, were you satisfied with the situation as it existed before the bringing in of this legislation? Are you satisfied that those jurisdictional problems can be sorted out among the architects and the engineers themselves without this kind of legislation at all?

Mr. Quinn: Yes, I am. Furthermore, that precise point was brought up at the professional practice committee at a time when we were put to the wall with this issue of time. We were told, "You do not have time to go through these regulations. You do not have time to do this." We said, "Okay, our act is fine the way it is. All we need is a small modification that will take care of the jurisdictional problem. Let us just deal with that and leave the rest."

Mr. T. P. Reid: What is the small modification?

Mr. Quinn: The small modification was the arrangement of what are the jurisdictions of architecture and of engineering.

Mr. T. P. Reid: So you feel that that went through the joint committee?

Mr. Quinn: That had been resolved, yes. I was also on the task force that looked into some of the architectural-engineering dispute. It is taken care of in a very small section of this. Take the latest model. You can throw out an awful lot of this and it would not bother me as a practising professional.

Mr. T. P. Reid: Mr. Fram, what do you have to say to this?

Mr. Fram: With regard to specific issues, the objection to the right to ask the insurer to provide all of the things that are submitted both by the insured and by anyone providing them, we will be proposing a change to that to limit it in the case of the Professional Engineers Act to professional reports done by professional engineers for the insurer that are in the insurer's control and not require the insurer to provide the statements made to him by the insured.

On the issue of the right, where the registrar has reasonable and probable grounds to believe there has been either incompetence or misconduct, then it is indeed a great power in the hands of the registrar, but it is there to protect the public from misconduct and incompetence. If there is a refusal to allow entry, the registrar must go to court and obtain from the court a search warrant and, in that sense, it is no different from other search and seizure provisions.

All of those things are provided so the public may be protected from serious things, not from the disappearance of documentation by the person appearing today but by persons who are not so scrupulous in their attention to their professional obligations.

8:40 p.m.

Mr. T. P. Reid: Like 17 minutes missing from a tape.

Mr. Fram: Right. We are not dealing with members of the public. We are dealing with people who are granted a special licence, a monopoly. We are not dealing here with a government power, although power is conferred by legislation. We are dealing with a power conferred on a self-governing organization. We are told those things are needed. If they are needed, they should be there.

Mr. T. P. Reid: I am sorry. You are told they are needed. You are told by whom?

Mr. Fram: The Association of Professional Engineers of Ontario. The organization, speaking through its council, has said that it wants the power to undertake this type of thing where it has cause to do so and that power is included in the act.

Mr. T. P. Reid: I really find it difficult to believe that even this government would be told by anybody what it should do. But let me go back one step to what Mr. Quinn has said. Maybe you could give me a five-year background, from 1983 back to 1978 or 1979. How many cases have there been, either before the APEO or the courts, in terms of professional misconduct or incompetence?

Mr. Fram: I think we would have to ask the APEO.

Mr. Wardell: I am the registrar, APEO. We are averaging at least 12 disciplinary cases a year.

Mr. T. P. Reid: In what sense? Operating without a licence? Incompetence?

Mr. Wardell: I am talking about incompetence. We are dealing with members and the conduct of members. I would say that in 90 per cent of those cases the member has been charged with incompetence, gross negligence and violation of our code of ethics.

Mr. T. P. Reid: Twelve out of 50,000 registered engineers?

Mr. Wardell: Yes, I think that is a fairly good record for the profession itself.

Mr. T. P. Reid: It sounds almost like hunting mice with an elephant gun. How many of those cases have wound up in court?

Mr. Wardell: They do not end up in court unless the member is found guilty and wants to appeal in the courts the decision of the APEO.

Mr. T. P. Reid: Presumably we are here to protect the public. How many members of the public have brought a suit or a case or have sued for damages for incompetence in those 12 cases?

Mr. Wardell: That I do not know. These cases have been brought to the attention of the association. They are examined by our practice and ethics committee, which is a screening committee to council. If it decides there would appear to be sufficient evidence to proceed with a formal disciplinary hearing against a member, then a member of staff would act as a complainant. We develop evidence, employ witnesses and proceed in that manner.

Mr. T. P. Reid: Mr. Quinn has indicated fairly succinctly that most of those cases have not been instances in which, for instance, a general contractor, who presumably is a fairly sophisticated player in this matter, has laid the charge. I get the strong impression it has come from either an architect or another engineer.

Mr. Wardell: Let me give you an example. An arena collapsed about four years ago a half hour after a hockey game had been completed. It was very fortunate that nobody was killed.

We had a case in Ottawa where a building under construction collapsed. A workman died from injuries. An engineer was responsible.

We had a case just recently, and I will not mention the area, where through our investigation the local building department put a stop-work order on and the owner was faced with something like a \$250,000 to \$300,000 cost to reinforce that building. The structural engineer had made a mistake.

These are serious cases. There may be only 12 a year, but it could result in injury and death to the public.

Mr. T. P. Reid: All right, that is fine, but--

Mr. Chairman: Pardon me, the parliamentary assistant would like to comment on this.

Mr. MacQuarrie: First, I would like to compliment Mr. Quinn on a very eloquent presentation. I do not necessarily agree with you in some of your conclusions.

First, the bill is designed to ensure that the professional engineers in Ontario are, in fact, a self-governing profession. Do you agree or not agree that this should be the case?

Mr. Quinn: I think the engineers have shown themselves capable of being self-governing and doing it responsibly.

Mr. MacQuarrie: As a consequence of that, do you not feel that any self-governing profession should also have self-policing responsibilities?

Mr. Quinn: Yes.

Mr. MacQuarrie: I take it your only quarrel with the legislation in that respect is with the nature of the policing responsibilities, the responsibility placed on the registrar?

Mr. Quinn: Yes, sir.

Mr. MacQuarrie: Dealing with insurance--

Mr. T. P. Reid: Mr. Chairman, I do not want to get into a procedural wrangle, but I was leading the questioning here. If the member chooses, I am sure he can start when I am finished, if you do not mind.

Mr. Chairman: Agreed.

Mr. T. P. Reid: Mr. Wardell, in those 12 instances, was there not sufficient protection to the public through the courts and otherwise to protect the public interest, the individuals and the public at large, without this act?

Mr. Wardell: What protection are the courts going to provide? They might award damages, financial compensation, but if we do not take action and discipline the member, either cancel his membership or his licence and prevent him from practising, he is at it again. What mechanism does the court have?

Mr. T. P. Reid: Do you not have the ability now to license him or not license him?

Mr. Wardell: Yes, we do.

Mr. T. P. Reid: If I was an engineer and I built an arena and it collapsed and killed 500 people, I presume at the very least you would pull my licence.

Mr. Wardell: That is exactly what we would do.

Mr. T. P. Reid: What more do you need, other than that?

Mr. Mitchell: The step before the arena collapses, I think, is what is being talked about.

Mr. Wardell: We need the evidence in order to proceed.

Mr. MacQuarrie: Also the insurance.

Mr. Wardell: I do not understand your point, sir.

Mr. T. P. Reid: Mr. Wardell, the longer I am here, the more I do not understand either. What I seem to understand is that we are here to separate what we should give the architects and what we should give the engineers. We are hearing from individuals and groups of individuals that, in fact, we do not need this act for a number of reasons, everything from Mr. Quinn's comments that this is against civil rights and, therefore, presumably against the Constitution, to "We have not been consulted and it is going to adversely affect our members."

What I am trying to get at, sir, is, under the present act that already exists, is there not sufficient protection for the public so that we do not need this bill at all?

8:50 p.m.

I repeat, ad nauseam, I have never in 17 years heard a civil servant or the Attorney General say, "We are here to do the bidding of the APEO." I find that an amazing proposition, frankly, and with respect to Mr. Porter and the others, the architects, I find my focus is not on the public interest; it is on trying to sort out a jurisdictional power problem between your two organizations.

I have a great feeling for what my friend the member for Riverdale (Mr. Renwick) said earlier and what Mr. Quinn says. I have not yet been convinced that what you people are asking for is necessary in the public interest. If you are saying to me that if we give you these powers under Bill 123, an arena is not going to collapse in Rainy River or in Mr. Eves's riding or anywhere else, you cannot give me that kind of assurance.

Mr. Wardell: We have, certainly, the powers of discipline under our present act but there have been cases from time to time where we have known an engineer might well be incompetent, where there has been an occurrence in a building or structure, where we have been unable to take disciplinary action against that member because we have not been able to obtain the necessary evidence.

Civil litigation has taken place. We try to get engineering reports. Lawyers are saying "privileged information." Insurance companies will not provide us with anything. I know we have some cases, isolated as they may be, where engineers are walking around today and practising, and we know there have been instances of incompetence on their behalf.

Mr. T. P. Reid: Do you know how many lawyers are walking around doing that?

Mr. Wardell: I would hate to--

Mr. T. P. Reid: Even politicians.

Mr. Chairman: We seem to be questioning Mr. Wardell and really it is Mr. Quinn we should be questioning.

Mr. T. P. Reid: I have one further question. Mr. Quinn has commented that you do not need these powers, particularly the registrar's powers. If I understood Mr. Fram, he said it was not exactly what Mr. Quinn said, that a registrar still has to get a court order to subpoena documents and that sort of thing.

I have been through the act two or three times but the more I read it the more confused I get. I am just a simple boy from Rainy River. Maybe somebody can help me with that.

Mr. Quinn: Maybe I can read the section to you.

Mr. T. P. Reid: Which section?

Mr. Quinn: Section 34. It says, "Where the registrar believes on reasonable and probable grounds that a member of the association or a holder of a certificate of authorization, a temporary licence or limited licence has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the registrar."

There is nothing there that requires council's intervention and nothing that requires a formal complaint. The registrar just has to believe.

Further to that, "For purposes relevant to the subject matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization, temporary licence...and may, upon production of his appointment, enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under part II of the Public Inquiries Act, which part applies to such inquiry as if it were an inquiry under that act."

It is interesting that it says "powers" but does not say anything about responsibilities, for instance.

Carrying on in the case of obstruction of an investigator, "No person shall obstruct a person appointed to make an investigation"--there has been no complaint at this stage; the registrar just has a belief that something has gone wrong--"under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject matter of the investigation."

We have not gone near a court at this stage. In subsection 41(4) it says, "Any person who obstructs a person appointed to make an investigation under section 34 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000." My friend told me when I said I would resist someone coming into my office: "Don't worry about it. You will get your day in court and you will probably be acquitted anyway if you can show the judge just cause." I do not think so.

To get to the court situation you have to go to subsection 34(4). "Where a provincial court judge is satisfied on evidence upon oath"--this is so that Mr. Wardell can bring the police along with him--"(a) that the registrar by order has appointed one or more persons to make an investigation"--just by order; nothing about complaints or what have you--"and (b) that there is reasonable ground for believing there are in any building,

dwelling, receptacle or place any books, records, documents or things relating to the member of the association or holder of a certificate of authorization, a temporary licence or a limited licence whose affairs are being investigated and to the subject matter of the investigation..."

The judge has to have only two things: the appointment through Mr. Wardell and the belief that there are books. He does not have to find that there is any reasonable cause that the member has done something wrong; he just has to believe there are books there that are part of an investigation. This is absolutely true; that is the way it is written.

Mr. Fram: That is correct. Let us assume we have the kind of circumstance Mr. Wardell was talking about: a building falls down. We know an engineer was involved in the construction of that building. Does Mr. Wardell have to wait until somebody complains? He sees it written all over the newspapers. Does he have to go to court before he appoints somebody to investigate? Those are the questions we have to ask about those matters.

Mr. Quinn: May I respond?

Mr. T. P. Reid: I would like to respond. Should subsection 34(4) not be 34(1)? Should the registrar not have to go to a judge before he does anything else and say, "We have reasonable cause to believe this has happened, we have duly appointed somebody and therefore we give this person the authority"?

I do not know if we are arguing very technical points of law, but I think Mr. Quinn has a point. Wherever the complaint or action takes place, should the registrar not be required, just as a policeman is, to have a reasonable ground and a warrant from a judge or some such person to go and search somebody's house to get this kind of evidence?

Mr. Fram: His office as well. We are talking about someone going to a place and having authority to enter. If he is resisted, that is where subsection 34(4) comes into effect. But this person has authority to go in, look at the books, take the copies, take evidence upon oath and investigate the matter; that is what the provision is all about.

Mr. T. P. Reid: I understand what the provision is all about, but for some reason in this country we seem to be quite willing to believe a person is guilty and that if he is not guilty he has nothing to fear from police coming in and investigating. We tap phones--I am not involved in any criminal activity and I do not care whether you tap my phones or not. It is, frankly, a philosophy that scares me.

I understand what you are saying, but I also think the rule of law requires at the same time that there be reasonable and probable cause.

Frankly, I would almost turn Mr. Quinn's argument around and say that you as the registrar go to the judge and say: "We have reasonable grounds, which are that the arena collapsed. Mr. Quinn was the engineer involved and we think we should go in and seize his books." Then the judge says yes or no. This, to me, is a parallel with the human rights commission. I am glad you looked at the ceiling because that bothers me. These people take the same view. You are guilty until proved innocent.

Mr. Chairman: Mr. Reid, excuse me. We seem to be belabouring the point. We have three more questioners and we have already spent an hour with the first witness. Could we possibly move on?

Mr. Mitchell: Mr. Chairman, may I ask one supplementary?

Mr. Chairman: Fine.

Mr. Mitchell: I think I appreciate where Mr. Reid is coming from. However, I am not, like you, learned in the law--

Mr. T. P. Reid: I am not sure that is a compliment.

Mr. Mitchell:--and I am a little concerned about something you said a moment ago. It started a rather slow thinking process at this hour of the night. Let us assume that arena has collapsed. Surely that situation would wind up in somebody's area of responsibility. I am thinking specifically of the courts.

You are suggesting at the same time the registrar should go to the judge and say, "We want permission to do this." I suggest to you if it is not wound up in that other bailiwick, that judge does not have to give that permission because an investigation in all probability would be ongoing and ordered under some other legal process. The registrar in all probability would be batting his head against the wall. The judge orders all this and it goes down the pipe and some litigation or whatever flows from it. That judge still does not have the authority under this act to allow the registrar, APEO or whoever has requested it to discipline the member.

I do not know whether I am confusing you. With what you are suggesting, although it may seem very simple on the face of it, it seems to me you might have two conflicting ongoing investigations and the judge could conceivably not allow the one. As I say, I am not a lawyer, but I--

Mr. T. P. Reid: You are arguing the opposite case. One of my points was that if the arena collapses and if somebody from the registrar's office goes into Mr. Quinn's office, Mr. Quinn will throw the guy out. The registrar will then have to go and get a judge's order.

Mr. Mitchell: That is where I have difficulty. I do not think the judge--

Mr. T. P. Reid: By that time (inaudible) discredit everything he has got, if he likes.

Mr. MacQuarrie: Mr. Chairman, with all due respect, I think we are losing sight of one very fundamental fact here, that is, this legislation is creating a self-governing professional body with an effective monopoly over the professional services it provides, and that is from the point of view of the public interest and public concern. I think we are losing sight of that in this argument as to who can do what to whom, where and under what circumstances.

Mr. T. P. Reid: Whether it is state or state-sanctioned, it is still an affront to civil liberties.

Mr. MacQuarrie: They asked to be part of that group.

Mr. T. P. Reid: Obviously, Mr. Quinn and others have not asked.

Mr. MacQuarrie: When they apply for membership in the group, they agree to be bound by the regulations affecting that group, the same as any self-governing profession.

Mr. T. P. Reid: They have no choice.

Mr. Elston: Or they try to change the objects of that group, working from the inside rather than outside.

Mr. MacQuarrie: We have Mr. Quinn presumably trying to effect some changes in the legislation the group has proposed.

Mr. T. P. Reid: I will wind this up, Mr. Chairman. If under this legislation we give APEO the authority to set up registered retirement savings plans, group insurance and everything else, there is not going to be an engineer who is going to have a choice at all. If you want those benefits, you are going to have to join this organization. It goes back to what my friend Mr. Renwick said earlier in the day; there is not going to be any choice.

Either this legislation should deal with exactly what Mr. MacQuarrie said, a monopoly situation, a self-regulating body, or we should do away with everything else in this bill that is related to an association of people who have come together for individual benefit, if I may paraphrase my friend. We should deal strictly with the jurisdictional and the monopoly situation and do away with all that other stuff so that people have the choice of whether they join or do not join and whether they accept what comes with being a self-governing body. If they want to set up another body to deal with something that is going to benefit them as individuals and members of the association, that should be a separate ball game altogether. Do you agree with that?

Mr. MacQuarrie: Anarchy in the professional sense.

Mr. Chairman: Before we move on to the next speaker, we have spent more than an hour with this witness. We have another three and we hope we can get through them tonight.

Mr. Renwick: Mr. Chairman, I will try to be brief. I am indebted to Mr. Quinn for bringing to our attention the extraordinary extension of the powers of the registrar under this act. The first comment I would like to make, particularly in the light of the parliamentary assistant's remarks, is that we are not creating a self-governing profession; that has been around for a long time. All we are doing here is extending the life of that self-governing profession.

If I read the existing act in the cursory way in which I usually read these statutes, I do not believe the registrar has any such power as we are being asked to give at the present time. It is not a petition by the self-governing body for changes in its statute; it is a government bill.

The government bill has to answer the kinds of questions the member for Rainy River (Mr. T. P. Reid) has raised. The government bill has to ask, "What is the evil which the association has perceived over the years of its operation that will provide the evidentiary basis on which we should grant to the registrar of a self-governing body the kinds of powers that are contained in section 34?" This is not the registrar of loan and trust corporations; this is not that kind of a body.

Mr. Fram: But it is.

Mr. Renwick: If you will allow me, we are granting powers to members of the public, not to a government body responsible to this assembly. We are being asked to grant extremely broad powers of entry and seizure. I think it ill behooves this committee, without any evidence, to accept a government proposition that this extension of power is necessary, despite the fact that there are obvious flaws in the language of the draftsmanship of section 34.

When we come to the clause-by-clause consideration of the bill, we are going to have to ask ourselves and we are going to have to be provided with the evidence--and I assume it applies to myself as to all members of the committee regardless of party affiliation--as to what is the evil which the society found that requires the registrar, who normally, in my judgement, started out as a person who kept a register and performed certain functions, to be given the power to appoint persons, any person, to conduct this kind of investigation. Why is that being done?

9:10 p.m.

That is an extremely broad extension of power that requires justification. I say that for this reason. The parliamentary assistant said, "Should they not be given the power of policing their membership with respect to their capacity to carry on the profession?" Then we had the red-herring proposition of the collapse of a building. As usual, that confuses rather than enlightens the problem we have to deal with.

If there is a collapse of a building, there is going to be a police investigation of what took place that caused that collapse.

It is not going to be simply a question of withdrawing somebody's authorization. What you are talking about is a very important but very limited registration of a person that is going to be revoked if there has been "professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke the certificate of authorization."

I do not need to go on at any length. My colleague Mr. Reid has asked a significant number of questions about it, but I must say I had not appreciated until tonight that a vast expansion in the powers of the registrar is being asked of this assembly. I am not certain (a) that these powers are necessary, (b) that they should be extensive as they are, as put forward in this bill, or (c) that we as an assembly should be granting them to the registrar of a self-governing body to bring about this kind of investigation.

I am open to be persuaded, but there is certainly nothing that has been put before the committee so far which indicates to me that the registrar is entitled to this vast expansion of his authority. At some point, whether now or at clause-by-clause discussion, I think we have to have the evidence which would lead us to believe this is necessary and, second, whether or not the registrar is the one who should trigger the operation and whether he should have the wide power of appointing anybody he sees fit to carry out the investigations.

With the sophistication of the police, there may well be some process in which the registrar is the key person in the operation by which he should bring about an investigation, but to appoint anyone to make this kind of investigation on his own initiative seems to me to be a grant of authority which is quite extraordinary for us to be asked to grant.

I certainly would be interested to know if it is the intention of the government, when it amends the Law Society of Upper Canada, to provide this kind of authority to anyone in the Law Society of Upper Canada in such situations.

Mr. MacQuarrie: They can do it by audits now.

Mr. Renwick: It is not just simply a question of that. This is a question of an act of professional misconduct or incompetence.

When I mentioned the flaw in the drafting, what is that person required to make a decision about? To "appoint one or more persons to make an investigation to ascertain" not whether there is evidence that such act has occurred or evidence that there is such cause, but to ascertain "whether such act has occurred or there is such cause."

I find that offensive because it suggests, for example, that the registrar is to appoint a person who is to make the decision as to whether or not the person has or has not committed the act of professional misconduct or incompetence, or whatever the other

power is. It is not for the purpose of assisting the registrar to go through some kind of process, but to make the decision. Then there is the unusual statement in subsection 34(10): "The registrar shall report the results of the investigation to the council or such committee as the registrar considers appropriate."

I find that passing strange. The registrar, on instructions from no one, on his own initiative, like Haile Selassie by his mere word, conducts this investigation and then decides to whom the report is to be made. The report is to be made that the person has found an act of incompetence or professional misconduct. That is what he is charged to do, to ascertain whether such an act has occurred. I find that quite a frightening proposition because this is not just a single professional organization, serious as it is. This is the forerunner, as I understand it, of an outflow from the Professional Organizations Committee to try to bring some standards within the professional bodies.

I can quite understand there would be circumstances under which the registrar should be required to consult or refer to the police matters, or at a different stage perhaps within the profession itself or some professional governing body, where he has reasonable grounds to believe there has been some kind of professional misconduct or incompetence.

There are very serious problems confronting this committee and confronting the draftsmen of the Legislature before we are supposed to pass this kind of clause. As I said at the beginning, I am indebted to Mr. Quinn for bringing this forcefully, directly and effectively before the committee. We are entitled to a large number of answers, and I do not believe that tonight is the occasion to obtain the answers to those questions. When we come to the clause-by-clause discussion of the bill, I am sure there will be a number of questions to be raised. It may well be that the ministry will want to respond by way of some written document about the reasons why this extension of authority is needed.

The question always remains, what is the evil that requires this extension of the powers of the registrar? And, then, is this the way it should be done? My reaction this evening is one of grave concern that this is not the way it should be done. Very significant changes are going to have to be made in that clause, both for this profession and all the other professions.

Mr. MacQuarrie: Mr. Renwick, your comments and Mr. Quinn's comments have been noted, but I would specifically direct your attention to the fact that the registrar is under the onus of believing on reasonable and probable grounds. He has to meet at least that test in the first instance. Your comments will be taken into consideration.

9:20 p.m.

I wanted to refer to the question of insurance, Mr. Quinn, and your difficulty with the fact that insurance would be compulsory. Judging from my personal experience in the municipal field, I have come across situations where storm sewers have been

designed to an inadequate capacity and, in fact, were running uphill. The last we heard of the engineer, he was in Zaire with the Canadian International Development Agency.

What do you do in a case like that if you do not have anyone to look to? Mention was made of a building falling down. Mr. Mitchell and I are very much aware of an engineer's licence being suspended and civil liability flowing from a building which fell down, with no police investigation to the best of my knowledge. This was a building under construction.

What does the client do in a case like that to make sure he is protected? If they know the engineer is covered by errors and omissions coverage as a matter of professional responsibility, as many professionals are--I am speaking only of the profession with which I am most familiar, the legal profession. We have to carry errors and omissions coverage. I cannot see too much objection to another professional who is carrying out responsibilities, from which financial consequences flow which could adversely affect clients, carrying errors and omissions coverage in respect of his professional duties.

Mr. Quinn: In the case of the storm sewer that goes uphill, there two parties to the contract in the first place. It is a municipality that makes a contract with an engineer, not a naive or unsophisticated buyer of professional services. Would it be better off if it felt there was mandatory insurance and that mandatory insurance was some nominal sum?

For example, we make it mandatory that there be \$10,000 worth of liability insurance taken out by every member of the profession. That is not going to cover sewers which may cost \$3 million. You may go into the proposition thinking you are being protected but you are not being protected.

There are some cases for which you will not be able to obtain insurance. When the bridge fell down in Kansas City and killed over 100 people, the engineer on that job probably had \$1 million worth of insurance. A million dollars worth of insurance in that situation obviously is totally inadequate. When a building in Boston had a problem with its windows, the damages exceeded \$100 million.

If you think you are going to solve the problem of the public by asking engineers to carry \$10,000 worth of insurance, you are not. All the clients I deal with, without exception, are well aware of the type of claims or losses they may suffer and they take adequate care to see that we are properly insured. We tell them, for instance, in our contracts, this is the amount of coverage we carry and we are not going to be sued above that level.

Obviously, I am not personally rich enough if my million dollars runs out and there is another \$10 million to make good a claim against me. You are not going to get it out of my hide. I tell my clients, by all means, if you--

Mr. MacQuarrie: I take it you carry liability insurance.

Mr. Quinn: Certainly, I carry liability insurance, but the concern I have is that in making it a mandatory proposition I have not seen where you make a case that this is a requirement. I do not believe these things should be put in as a requirement.

Mr. Wardell said today that the first problem would be to identify who should be carrying it. I am saying that society is very sophisticated, the people we deal with. Normally we tell them: "This is the amount of insurance we carry. If your needs are higher than that, we are prepared to get it on your behalf and we are capable of getting it on your behalf. If we cannot get it on your behalf, maybe you should be concerned about that."

I do not think there is any magic cure in making some mandatory level which, because it applies to 50,000 members, will have to be at some nominal low level and will give, in effect, a false security to the public.

Mr. Fram: I want to make one point of clarification. It is not all employees. Employees will not be required to carry it. It is only those who are offering services to the public.

Mr. Elston: Mr. Chairman, some time ago I raised my hand to indicate I wanted a question. I will try to be brief.

One of the things that has come to me this evening is an incident that happened when I was quite young and that was the collapse of an arena in Listowel, Ontario. It would have been about 1959 or 1960 and I was in elementary school at the time. I can remember the loss of life that was involved. Maybe it would be instructive for all of us to understand exactly the process of investigation. Perhaps the registrar as he then was, perhaps it was not Mr. Wardell, I do not know who it may have been at that time--

Mr. T. P. Reid: He was in public school then.

Mr. Elston: Perhaps. The question really is, how would the investigation have taken place with respect to the collapse of the arena where there was a loss of life. I am not sure now, because it was a while ago, whether it was five or seven people who were my age. I remember how much I was struck by the loss of life. Exactly what investigation took place at that time? Perhaps it would be instructive for all of us to understand exactly what investigation took place under the legislation as it now exists and what the investigation would be with respect to the legislation which is under consideration now.

I do not know whether it is possible that we could have some kind of a report with respect to the type of activity that was carried on by the Association of Professional Engineers of Ontario, if that was the group that investigated that incident. It would be instructive for all of us to find out exactly what action was taken or not taken and whether or not there could be further activities taken under the new legislation.

That would help us, as a concrete example, to determine the answers to questions which have been raised this evening with

respect to what has been until now a very hypothetical situation. Until we put it to the test of a concrete example of the situation, for instance, at Listowel, that might instruct us more particularly as to what could be done and what could not be done. If it is possible, maybe we could have some kind of report on that incident because that one is something that has stayed with me for some time.

Mr. MacQuarrie: I could direct your question to the representatives of APEO who are present. Would it be possible for you people to prepare a brief report along the lines the member has requested?

Interjection: Yes, sir.

Mr. Elston: I have a couple of short questions. We have a particularly interesting witness with us now. He has offices not only in Ontario but also in Montreal and, as I understand it, in western Canada. We have examples of legislation which has been put forward in Quebec with respect to the inspectors visiting the offices, for instance. It might be interesting to see whether or not inspectors have visited his offices to go over his books and whether that is a workable situation.

Also, maybe he could address for us the question of whether or not the legislation which was passed most recently in Alberta has caused a difficulty with respect to the operation of his practice out there. He is in western Canada. I presume he is in Alberta, and perhaps he could talk to us a little bit about what ramifications the changes in Alberta have had.

I know this is going to be tempered somewhat because he has said he can do without any changes here in Ontario, but perhaps he would share with us the experiences he has had with respect to Quebec and Alberta legislation.

Mr. Quinn: With respect to the Alberta legislation or regulations, I practise out there under a temporary licence. Alberta requires residency in the province for a full member's licence. This morning I was interested to hear the minister talking about the mobility of engineers across Canada. At the moment there is not true mobility in the sense that my registration is on a yearly basis, a temporary basis, in Alberta.

9:30 p.m.

I have not found any problems with the Alberta act in terms of running a business there. I do have difficulty with the Quebec situation. The syndic, as he is called in Quebec, invited me in for a discussion with him. You might be interested to know that when the syndic was first appointed--it is always interesting what is going to happen in advance. You are told: "No, nothing like this is going to happen. Have faith. Trust me." I guess I am old enough now to have some reservations about that kind of trust. The first thing the syndic in Quebec did was to hire two ex-Royal Canadian Mounted Police officers as investigators. What they did was to go to every office, every building site and what have you, in the province.

Mr. T. P. Reid: They did not burn them down.

Mr. Quinn: No, but that kind of proposition has the public a bit jittery about giving over these powers. I have concern. It is a humorous remark, but it chills me a little bit.

In any event, in my particular case I met with the gentleman in high indignation and I did not hear anything further from him. I had been a councillor in Quebec and I am not sure how everybody else fared in the proposition. There are different levels of clout in handling these situations. I resented the intrusion, the blunderbuss and the mouse analogy of sending investigators into every office and so on. There was no apprehended reason to do so. It bothered my sensibility and it does to this day.

I left Quebec because of my concerns about the way that society was going on issues like that. I certainly do not want it to happen in Ontario that the registrar is going to have a bunch of ex-RCMP guys who can come along to my front door and say: "The registrar has reasonable grounds. Give me all your books."

When you talk about buildings falling down, the truth is that when a building falls down most of the information is in the public domain. There has been an issue of a building permit. In order to get that building permit, you have to provide drawings and details. There is almost no collapse situation where eventually there is not a report that ties in culpability. I have been an expert witness in a number of cases like that. There has been adequate redress.

What the registrar is talking about is the case of a building falling down. He is talking about catching the fox before he gets into the chicken coop. The only problem with that is that you may have to catch every animal in the countryside in the proposition. At some stage you have to ask yourself about the benefit and what every animal is giving up in terms of freedom. If you are going to put every animal into a cage so that nobody's chickens will get rumpled, that is something that concerns me.

Mr. Elston: What about Alberta?

Mr. Quinn: I cannot comment on Alberta. As far as I have found, I have had no problem practising in Alberta but I have in Quebec. I do not recommend that the Quebec experience be brought here.

Mr. Elston: I have one other question. You probably heard earlier about the issue of the membership voting on officers. Do you have any concern about that? You are a member of APEO. The previous witnesses spoke of their concern about direct voting by the membership with respect to officers. As a dissenting member of APEO--I call you dissenting only because you are presenting an alternative view to what has been generally presented before--do you have a concern about the election process and its inclusion in the regulations rather than in the bylaws, as was requested by the society that spoke before you?

Mr. Quinn: My only concern with engineers is that,

generally speaking, they are more interested in getting on with their jobs than with a lot of the extraneous things around them. In large measure, they see elections and so on as being extraneous. The apathy among engineers is something that I am ashamed of. If any change in the process will make more engineers participate in the voting system, I would be in favour of it. I do not think it will.

The system now is working quite well. There may be some people who are concerned about aspects of it and I would defer to those people if they can put up a good case. I would not have any difficulties.

Mr. Chairman: Are there any further questions of the witness? If not, thank you very much, Mr. Quinn, for being with us this evening.

A. A. SABLATNIG

Mr. Sablatnig: Mr. Chairman and honourable members, my concerns about the new act relate primarily to the nonappeal provisions suggested in the act in subsections 14(4) and 19(2).

I would like to suggest that you consider deleting these two provisions. You might also consider strengthening the proposal of section 32 to include a general statement that any decision by the registrar or a committee with respect to an application for membership may be appealed to a court or any kind of third, outside party. There could be an alternative for this appeal. I would like to suggest as well, for your consideration, that the academic requirements committee be appointed from members of the academic community by the Minister of Education and shall report to the Minister of Education.

Obviously I have reasons for my recommendation, but before I get into the reasons I wish point out some specific circumstances which enable me to make these comments.

I will give you a few examples from my personal experience. I do not plan to plead a personal case, but due to my unique background and the very specific information I have I would like to point out to the committee some weaknesses in the present practices. The practices are proposed to be perpetuated in the new act.

Technically, the case history refers to so-called "transfers from other jurisdictions." I am trying to distinguish here transfers, not persons who essentially have obtained their qualifications within the Ontario education system but from outside.

The material also is presented from the viewpoint of an applicant and, as you are probably aware, the applicant is not entitled to full information in terms of inside information of the association.

9:40 p.m.

I would like to present the case history. The basis for application was education obtained from the Federal Institute of Technology in Austria. In Austria, this type of education qualifies for an engineering licence and, through the European Federation of National Engineering Associations, qualifies for engineering licences in practically every European country. As well, through the United Nations Educational, Scientific and Cultural Organization and other United Nations agencies, such as the United Nations Industrial Development Organization, it qualifies in most other countries of the world.

I presume that Ontario may be one of the very few countries or places where this particular engineering licence is not recognized as a licence to practice.

Shortly after immigrating to Canada, I submitted my documentation to the Association of Professional Engineers of Ontario. That was in 1967. I received a requirement for four additional examinations. Unfortunately, I received a job outside the city and was not able to pursue this. But in 1975, when I was ready, I received 14 additional requirement examinations from APEO.

Prior to that, a personal friend of mine applied to the University of Waterloo with the same documents and was accepted in the masters program in the engineering faculty. I was curious, so I took the documentation to the admission office at the University of Toronto. They informed me it was good for first year university.

In all fairness, APEO recognizes the education of an Austrian diploma engineer as the minimum requirement for licensing. I have to point out that a diploma engineer has completed all examinations towards a doctorate degree but has not delivered his thesis. This means that while persons educated in Ontario essentially require a bachelor's degree from an engineering faculty for a licence in Ontario, transfers from Austria require essentially a doctorate degree.

Another type of inconsistency is entry requirements. This may occur when engineers with prior experience in one country transfer to another one, particularly when products the engineer has designed are being readily exported to the country to which he intends to move.

I realize the example is a little farfetched, but nevertheless, I would like to make it. The gentleman comes from my home town and is an alumnus of my educational institution. He has been designing cars all his life. He would have ended up with the same type of evaluation that I had received at that stage. He is Mr. Porsche.

Having had these four decisions, I felt a little uncomfortable in terms of the jurisdiction for academic assessments and I tried to get this clarified. Since immigration is a federal matter, I approached the federal government. The Secretary of State at that time, the Honourable Hugh Faulkner, was kind enough to advise me on several aspects.

I have one of his last letters attached to my documentation. He mentioned that the essence of professional licensing is an academic assessment judgement. He also said, "Academic assessments are not a legal function of any federal agency. Such assessments can be made by various bodies for their own purposes." I would like to stress the phrase "their own purposes." He said, "Assessments by a university are not necessarily relevant to a professional licensing body."

With that responsibility which each province has by statute delegated to a professional organization goes the requirement and the responsibility to evaluate applicants.

I wrestled with the issue of qualifications for academic assessments. To become a member of APEO and any of its committees, including the academic requirements committee, a person has to have complied with the requirements of section 14. The academic requirements consist entirely of technical subjects, such as calculus, linear algebra and others. There are no requirements to qualify anyone as assessors.

In the cases I have referred to before, I attempted to determine what the qualifications were of the people who expressed these academic assessments. I could not find out who did the first one. In 1975, the evidence clearly indicates there was only a clerical staff member of APEO. At the University of Waterloo it was a university professor and at the University of Toronto it was a clerical employee.

The fact is that at the present time in Canada there is no public authority that can carry out legally binding academic assessment judgements to the public at large. The proposed act does not provide any assurance to the public that the assessments which will be carried out by APEO, as an agent of the government of Ontario, will be carried out by qualified assessors. As well, there is no standard for academic assessment.

I have attempted to have the various issues clarified with certain other requirements that may exist. I initially requested the association to reassess its position. I also attempted to define the legal position in terms of clause 12(b) of the present act and made a submission to the Ontario Human Rights Commission about that.

In view of the continued uncertainty and essentially the lack of answers I received, I eventually requested the Austrian ministers to discontinue the granting of engineering licences to Canadian engineers unless they had academic qualifications of a doctor's degree. I attach this particular document for your attention. I personally feel such a request in today's world of international co-operation and trade is a very regressive step. The engineering profession is an international trade today, based largely on international personal licensing standards.

I have submitted to the Professional Organizations Committee the original of the Austrian personal licensing standard, which is a federal Austrian statute, about 530 pages in volume. These are only the first 60.

I have attempted to find out from APEO over the years what its personal licensing standard was and I have not been particularly successful. Two documents of this type have been given to me, but I am not quite certain whether this is a licensing standard or not. These documents do not enable APEO to carry out reasonably successful academic assessments. For this reason, I feel perhaps the Ministry of Education would be in a better position to develop such a standard and have the qualified resources to do so.

An observation I would like to make on the proposed drafting generally is that, perhaps due to this inadequate standard, it is difficult to determine the exact responsibilities and, for this reason, some of these responsibilities have been transferred to this new act to delineate the various responsibilities between engineers and architects.

There are other possibilities that exist. As an example, I would just draw your attention to the Austrian approach, which happens to grant engineering licences and also trade licences--in my case, approximately 10 trade licences like electrician, plumber, stationary operator. It is a different approach to this aspect.

9:50 p.m.

The principle I am concerned with is that the applicant for a licence should have the opportunity to prove his qualifications. The standard of licensing should be a public document. It should be readily accessible and the responsibility of the agency should be clarified to provide qualified assessors for transfers from other jurisdictions outside the regular educational process. I think these opportunities should exist.

As a fourth principle I would like to suggest there should be a right of recourse in case of a misjudgement. This gives an opportunity to rectify and correct an inadequate process that may have led to some arbitrary treatment. Even if criteria are established and evaluated by qualified assessors, at least one internal review of a decision by the association should be provided rather than a review by an administration officer. I believe that is the process, for example, with the Law Society Act. An external review process should be provided as well.

I am asking here for a clear and essentially uncompromised expression of a right of recourse to the decisions made by a professional organization of the province.

Mr. Chairman: Thank you, Mr. Sablatnig. Mr. Renwick, I think you have a question.

Mr. Renwick: Mr. Chairman, I think Mr. Sablatnig raises a most interesting question. It is a matter on which the committee is going to have to be advised when it gets to clause-by-clause consideration of the bill. The bill provides that no person shall engage in the practice of engineering unless he is the holder of the licence. The registrar shall issue the licence if the person,

among other things, has complied with the academic requirements specified in the regulations and has complied with the experience requirements specified in the regulations.

I think the area Mr. Sablatnig refers to comes within the area of the academic requirements committee and the experience requirements committee which the council is required to establish. Then we have this situation where, as I understand it, a person in the circumstances Mr. Sablatnig puts before the committee applies to the registrar and is refused because of academic requirements or because of experience requirements.

The matter then goes on the initiative of the registrar or on the request of the applicant to the academic requirements committee for a determination of whether the applicant has met the academic requirements prescribed by the regulations, or it goes to the experience requirements committee for a determination of whether the applicant has met the experience requirements prescribed by the regulations, or it goes first to the academic requirements committee and then to the experience requirements committee.

Everything is fine up to then; the process is there. Then there are these astonishing provisions of the bill. In subsection 14(4), "A determination by a committee under subsection (3) is final and is binding on the registrar and on the applicant"; and in subsection 14(5), "A committee is not required to hold or to afford to any person a hearing or an opportunity to make submissions before making a determination under subsection (3)."

There is nothing to indicate anywhere that there is a requirement of the academic requirements committee to make any comparisons of the circumstances of foreign applicants who have become Canadian citizens. When I say "foreign applicants," I mean applicants who have acquired their academic qualifications or experience requirements abroad. There is nothing to indicate anywhere that any criteria are established by which the comparisons will be made that will determine whether that person would or would not meet the requirements for licensing. Is there a gap there or is there some problem there?

Mr. Fram: I think APEO can best address it out of its experience.

Mr. Laughren: Is it not conceivable that someone could get his elementary school, secondary school and university education here, then get an engineering degree in another jurisdiction and come back here and run into this problem?

Mr. Fram: Definitely. The evaluation of credentials is an enormous problem in the field of engineering. As I understand it from the number of applicants and the sources and bases of the applications, the groups that are called professional engineers in one jurisdiction are enormously different from those elsewhere. To get the magnitude of the situation and the perspective, we really need to have that described to us by the APEO.

The process here is really a statutory version of what the process is now. It is just a codification of the existing process.

Mr. Laughren: The point I am trying to make is if the registrar is making these decisions in such an arbitrary fashion, surely that registrar must have the qualifications from the various jurisdictions in front of him or her. It is not a limitless number of jurisdictions.

Mr. Fram: Right, and I think we should hear the registrar.

Mr. Wardell: Very briefly, I think you will have a little clearer understanding of our academic assessment when we provide you with, as promised this morning, the Canadian Accreditation Board's report dealing with Canadian universities. The Canadian Accreditation Board's assessment is the only sure one we have available to us for an applicant's educational background and experience.

The Canadian Council of Professional Engineers, the national body, has investigated universities around the world and does have a list of universities we can recognize, but we cannot compare them completely with one in Canada.

Our process, generally, is to place the applicant in one of three different streams. If he is a graduate from an accredited university in Canada, meets the two-year experience requirement after graduation and writes an admissions examination which deals with the legal and ethical practice of the profession, then he is qualified for membership. If the applicant is a graduate from one of the accredited universities in the United States, we can accept those qualifications, and the applicant is dealt with in the same manner.

10 p.m.

The next category or stream is for applicants from Europe who have graduated from a university on CCPE's list, where we have had some investigation. We have a fairly good idea of the syllabus, the courses taught, the quality of the courses. The applicant is then asked to write what we call confirmatory examinations. They generally consist of perhaps four or five examinations in the branch of engineering in which he has been practising or has graduated from at university. In other words, if he graduated from a university in electrical engineering he could select four subjects in electrical engineering. If he passes those examinations, then he must write the admissions examination, the practice and ethics examination, and he must also provide us with evidence of sufficient experience to be admitted to membership.

Those who have graduated from other universities, technical schools and colleges where we do not have any handle on their qualifications are assigned an examination program. Then, as a rule, they may well appeal.

At the moment, we have what we call an appeal board. Its function will be a branch of the experience requirements committee

as set out in this act. That will come out in the regulations. The applicant is interviewed by this group of engineers who will question the man on his practical experience in engineering. Depending on his experience, they may well waive some of the examinations that have been assigned to him. For an experienced engineer coming, say, from Europe, it is quite common that they will waive a good number of the examinations. He must write and pass the examinations that are left in a period of time and satisfy us as to the experience requirements and pass the admissions examination. Very briefly, that is our process.

Mr. Chairman: Anything further, Mr. Laughren?

Mr. Laughren: No. I suppose this does not deal with subsection 5 that my colleague was talking about, of not requiring to hold a hearing or opportunity to make submissions, etc.

Mr. Wardell: I am sorry. What section is that?

Mr. Laughren: Subsection 14(5), where you have the power to issue or not issue a licence. It is page 21 of the bill.

Mr. Wardell: Basically that would apply to the academic requirements. We feel very definitely that it is up to us to make the assessment on the documentation that the man can submit.

Mr. Laughren: Subsection 3 deals with academic and experience requirements, right?

Mr. Wardell: Yes. Very definitely, in the main, you cannot assess a man's experience requirements until you interview him, other than perhaps--

Mr. Laughren: No. It is the holding of the hearings, the submissions and the right to appear before your accuser, as it were, that I find so strange too, and why you feel it necessary to have that in there.

Mr. Wardell: I am sorry. I cannot answer that question.

Mr. Renwick: From what Mr. Wardell has said, I want to reaffirm my concern about the examination part of it. Passing the examination set by council has nothing to do with the academic requirements committee as such, or anything to do with the experience requirements committee.

There is nothing here to indicate there are any criteria by which the academic requirements committee or the experience requirements committee will be able to carry out an equation between the academic requirements, which are under consideration of the applicant, or the experience requirements that are under consideration of the applicant, and those specified in the regulations, which would be normal for the person who is applying.

This is not as though somebody suddenly appears in Canada today and makes the application. The person has to be a citizen or have been granted permanent residence in Canada before the registrar is required to consider his application. So it is

somewhere down the road after the person has arrived in Canada. There is nothing here that speaks about a comparison capacity of the academic or experience requirements committees.

It is a difficult question but those comparisons have to be made if we are going to be reasonable about it. As my colleague has said, I cannot believe when it is a matter of a person's professional livelihood that we would be passing a bill that says a committee is not required to hold or to afford any person a hearing or an opportunity to make submissions before deciding whether the person is entitled to the issuance of a licence.

Mr. Wardell: I would be inclined to say at this point that we are certainly prepared to take comments into consideration. The ministry will review them.

Mr. Elston: I have two comments, rather than questioning the witness. As we have gone along with presentations from members of the public and associations, the number of items that have appeared to be very contentious have all of a sudden, or maybe as a plan, become part of the regulations. The issues that have come before us as legislators have more often than not been put off to be dealt with by regulation in an arena that becomes much less public than this forum. It concerns me in a number of situations.

With respect to this particular gentleman, the registrar of the Association of Professional Engineers of Ontario indicates it will become clearer after the regulations are passed. With respect to the election of officers, it is something that will be left to be determined by regulation.

As legislators, we are being left to pass a bill that is incomplete, to say the least. It will probably perpetuate the difficulties and will probably, in more ways than one, cause a great deal of dissension with respect to the various members of the profession who have expressed at least a concern, if not numerous concerns, either strongly or otherwise, to this committee. I continue to be concerned about this sort of operation with respect to legislation.

I can understand the bona fides of the people who operate through the minister's department. But at the same time, I have difficulty extending my trust to deal with questions that remain unresolved when we as legislators are not even able to have access to the amendments that will determine the ultimate formulation of the legislation with which we are dealing.

10:10 p.m.

I have to raise that objection to be considered by yourself as a representative of the ministry, Mr. MacQuarrie, and for Mr. Fram's consideration as well, so that we do know what in the dickens we are actually dealing with.

I am prompted to say these words not so much for my own sake but because on a Tuesday night we are sitting until the hour of 10:30 p.m. or however long it will take to get the presentations finished. We have had about 20 people considering the

presentations made by various members of the public. In my experience, limited as it is, in dealing with legislation we have never had this large a number of people looking in on the deliberations of a committee, except when it is extremely important legislation. It is in that sense I remain concerned that the committee is not able to view, one, the regulations, and two, the amendments which are proposed.

I have to ask again, as I did this morning, that at the very earliest opportunity we be made aware not only of the amendments that are proposed but also of the regulations which will in large manner shape the type of legislation we are passing. Until that happens, I cannot see us dealing with respect to the clause-by-clause. It seems the regulations will shape the ultimate end of this legislation.

Mr. Fram: In this connection, it is important to bear in mind that the regulations under the existing act govern more of the process than they do under the proposed bill. The process set out in the statute is one that is in the regulations under the existing act. Rather more than less of the important functions of the operations of the self-governing profession is before you than it has ever been before.

Mr. Elston: But that does not relieve us of the necessity of examining what is the overall program or the criteria set down by the ministry to govern this profession.

Mr. Laughren: Any changes in the act.

Mr. Elston: That is correct. My friend indicates that any proposed changes in the act could come about through the regulations. We have no control over those.

Mr. Fram: No changes in the act can take place under these regulations.

Mr. Elston: We have heard about deliberations with respect to the election of officers which may take place. That would be a change, as I understand it.

Mr. Laughren: If the bill changes, the regulations will of necessity change too.

Mr. Fram: That is one of the reasons why the regulations are not available. You must have an act to develop the regulations under it. You can look at the regulations under the existing act for certain correspondence where the powers are similar.

Mr. Elston: I agree partially but, in answering a concern this witness has put to us, the answer from the registrar has been basically: "Wait until the regulations appear. It will become much clearer to you as to how we are going to deal with that." How can we pass legislation that leaves it to the regulations when we do not know whether this man's concerns about the system will be addressed or not? We have no avenue to address his concerns when it goes to regulations. Are you going to undertake to me that this gentleman's concerns are going to be

addressed in a satisfactory manner to deal with his concerns?

Mr. Fram: I cannot undertake that, under the new act any more than the old, the APEO will grant him a licence. No, I cannot.

Mr. MacQuarrie: It is a question of how comprehensive legislation can be. We are dealing with items that, in terms of academic requirements at least, are more properly dealt with by regulation than by statute.

Mr. T. P. Reid: That is not the point we are arguing.

Mr. MacQuarrie: If my understanding is correct, we have already heard an indication of the present academic requirements. There is no reason to believe, at least to the best of my knowledge, that these are going to change.

Mr. T. P. Reid: With respect, that is not the problem. The problem with subsection 14(5) is that a hearing will not be held and a person can be refused the right to be heard.

Mr. MacQuarrie: I have already indicated that those questions were going to be considered by the ministry.

Mr. T. P. Reid: You are drawing a red herring across the whole issue.

Mr. Elston: Perhaps I could suggest to you that under certain bills in the Ministry of the Environment the implementation of the act was stalled until there was an opportunity by public forum to consider whether the regulations as drafted complied with the legislation as approved through the committee. Perhaps that is something you could look to as well and then come back to us with that.

Mr. MacQuarrie: I am not prepared at this point to say what regulations will ultimately be passed.

Mr. Elston: The only point I am making is that the regulations are going to figure very substantially in the ultimate direction that this legislation is going to take.

Mr. Gillies: Did the Attorney General not already say that he would have regulations here by the beginning of the week?

Mr. MacQuarrie: I would suggest that the bill currently before this committee, coupled with the regulations currently in existence, will give you a pretty good indication of the direction the controls of this profession will take.

Mr. Elston: Could you perhaps discuss with others in the ministry the possibility of the committee having the regulations in at least some kind of form so that we can consider them with respect to the legislation and so that we know what the total package is going to be?

Mr. MacQuarrie: I think the minister already talked about that earlier. They are not ready and cannot be ready in

final form at least until the legislation is passed.

Mr. Elston: You are asking us to pass the legislation not really knowing what--

Mr. MacQuarrie: Yes, but in terms of regulations--this is an expression I have used before--you are starting with an empty pail. You cannot make regulations without the legislation.

Mr. Elston: I am sure you must know what direction the regulations are going to take. You have an idea.

Mr. MacQuarrie: I have already given some indication.

Mr. Fram: I think, in essence, you are dealing with a self-governing profession; a profession that sets the standards for its operation. Since the 1930s, the profession has set the standards for its operation and the standards of its qualification, where those qualifications are decided by the professional body.

Mr. Laughren: Within the act.

Mr. Fram: Within the confines of the act. That is not changed under this bill. The profession still establishes its own criteria for admittance.

Mr. Elston: Okay. Here is the key to that. The question I have raised is one with respect to who speaks for the profession. There seems to be considerable concern about who is looking out for the engineering profession, whether it be the APEO in addressing certain concerns to us, whether it be the Canadian Society for Professional Engineers, whether it be individual members like Mr. Quinn who appeared before us, or whether it be an individual such as the current witness who has addressed concerns about accreditation.

10:20 p.m.

Even though we may recognize it as a self-governing group of people, we still do not know what it is going to be governing until we see some sort of form of regulations which you as a member of the ministry will approve or at least extend to the cabinet for approval through order. That concerns me because we do not know the end product. With that I will have to stop, I guess, because we have other people to hear from.

Mr. MacQuarrie: As I understand it, in other self-governing professions as well as this one, the governing authority of the profession comes forward to the appropriate minister in charge of the statute or within whose ministry the statute falls, suggesting changes to the regulations that might prevail. The ministry considers them and brings them forward.

Mr. Elston: The key is still who is the spokesperson for the group and probably that seems to be brought forward--

Mr. MacQuarrie: The spokesperson is the governing authority; when it is a self-governing professional body; it has its own spokesman.

Mr. Gillies: I do not think there can be any question, based on the evidence we have seen so far, that the only spokesman now for the engineering profession is the APEO. The evidence we heard this morning is there are 50,000-odd engineers in the province. No individual society or interest group within that profession could claim more than 3,200-odd members, I understand.

Now there are problems with that relationship. I think that is what we spent a lot of the morning on as to the licensing role of that body as opposed to the interest group role, but I do not see in the broad sense how anyone else can claim to speak for the engineering profession apart from APEO. I think that is what we are with right now.

Mr. Elston: Mr. Chairman, we may ask for further representations on that point, but perhaps we should move to the next witness.

Mr. Chairman: There being no further questions of Mr. Sablatnig, thank you very much for being with us this evening. The eighth witness is Dick Stewart.

DICK STEWART

Mr. Stewart: Mr. Chairman, my name is Dick Stewart. I am a mechanical engineer. I have been practising as an engineer since I got out of school in 1954. My work right now is equipment manufacturing and project engineering services.

I have typed out a brief which I will read. I will try to make it as short as I can because time is going on and I believe you have one more person to listen to. To open my remarks, sometimes the obvious is the most elusive. As you are without doubt aware, government appoints members to the council of the Association of Professional Engineers of Ontario. As I recall, a government appointee questioned the obvious when a proposed revision to the client-engineer form of agreement for consulting engineers was submitted to council for ratification. He questioned the logic of changing something that was already proven for the sake of change.

Discussions for the purpose of changing the existing Professional Engineers Act have gone on now for some five or more years. I do not know how long it has gone on, but between the studies and so forth, it is quite some time.

No one has yet provided me with sound reasons why the entire existing act should be rewritten. Admittedly it has faults, but specifically I personally, and this is my opinion, object to clause 2(f) since it virtually negates the entire act. However, the existence of one or more undesirable clauses or omission of clauses in an act does not warrant its wholesale dissemination or

reconstruction. This may be good business for lawyers, but it is of doubtful benefit to the public and the association's members, both of which are prime considerations.

The other point I want to make in preamble form is, what is the purpose of such legislation? Simply put, it is an agreement between, on the one hand, society through government for better public protection and, on the other hand, the members for a reasonable degree of exclusivity. Some people will not agree with this philosophy, but it is rather basic and I am a simple guy.

Mr. Laughren: I am sorry to interrupt, but the witness is referring to clause 2(f) and I think that is of the old bill.

Mr. Stewart: Of the old bill; that is correct.

Mr. Laughren: I certainly do not have that in front of me. I wonder what clause 2(f) is that you say negates the bill.

Mr. Stewart: To me, it is a weakness. Some people do not agree with me, but anyway that is a matter of opinion. I think if we get into these details, we will be here quite some time. If you have somebody else to hear, I do not want to be unfair to somebody else.

Mr. Laughren: Carry on.

Mr. Stewart: What is the purpose of such legislation? As I said, it is an agreement between, on the one hand, society through government for better public protection and, on the other hand, the members for a reasonable degree of exclusivity. That is a matter of philosophy. Some people would not agree with it, and I am sure there are some people in the NDP who would find that abhorrent.

Mr. Gillies: Does the reverse hold true?

Mr. T. P. Reid: You certainly got their attention.

Mr. Laughren: We have always spoken highly of mechanical engineers.

Mr. Stewart: We have more to go through, gentlemen. I know it is late, but--

Mr. Mitchell: You just brightened up the evening.

Mr. T. P. Reid: Maybe you should stop right there.

Mr. Gillies: Quit while you are ahead.

Mr. Stewart: Put in simple terms, government says, "If you put and maintain quality goods"--and I am a simply guy; I say quality goods--"on the market, we will give you a reasonably exclusive territory."

On the other hand, the members say, "If you give us a reasonable degree of exclusive territory, we will make every effort to ensure there will be quality goods available to the market of that territory."

Mr. Laughren: That is the market system.

Mr. Stewart: Yes. That is an oversimplification but it is common sense. What you are doing is making someone responsible, and if he gets out of line, you have someone to point to and say, "Okay, you son of a bitch, what happened?"

Mr. Laughren: That is my kind of language.

Mr. Stewart: You, being lawyers, or most of you, I assume, are lawyers--

Interjection: Watch the insults.

Mr. T. P. Reid: You can talk about the NDP, but do not go too far.

Mr. Elston: Most of us either are or wish we were.

Mr. Stewart: You, being lawyers, are better aware than I that this is simple consideration and consent. In reality, the legislation is no more than the embodiment of such an agreement.

Comments regarding specific points of the proposed act follow. Section 3 of the existing act defines the association as a body politic and corporate. Section 2 of the proposed act defines the association as a body corporate without share capital.

The assets of the association, at least in my opinion anyway, are those of the members. I find the addition of the words "without share capital" particularly disturbing and I must most emphatically announce my unease over the new wording.

The association has of late come closer and closer to government and there are increasing signs of it becoming rather fat, in which case the members for reason of sound and good management may wish to remove some of the excess money. There is \$4 million sitting there. "Come on, fellows, work a little hard." That is business and it is a good way to think.

Interjection.

Mr. Stewart: Someone is not happy back there, but anyway--

Mr. Laughren: They are all smiling.

Mr. Stewart: The proposed rating could void the members of a substantial part of their right of financial control of the association.

Regarding section 3, the "not fewer than," and "not more than" and the "as provided by the regulations" caused me great

anxiety, so much so that I had difficulty believing I was reading, in fact, what I was reading.

Since government will be able to write and revise the regulations without reference to anyone, government could change at will the structure of the council and at the uncontrolled discretion of government. The council could contain 12 or 13 government appointees and only 15 elected members. When one considers many of our members are government and quasi-government employees and are free to run for council, any form of control, direction or even influence by the members could be removed.

10:30 p.m.

If government wants to run the whole show, why does it not come out and just say it? Clause 3(2)(b) does not specify who the five or seven councillors will be or where they will come from. While I suppose the government will want to appoint engineers to these positions, I believe it must first be clarified.

The makeup of council is obviously important. Who actually selects the government employees is therefore equally important. I was advised that the government's previous practice was to follow the association's recommendations in selecting the engineer government appointees. Would the government advise us of its present practice with respect to the selection of the engineer government appointees and of its intention for the duration of the proposed act, if there are to be any?

The regulations allow the council of the Association of Professional Engineers of Ontario to elect the president and vice-president. This would greatly detract from the members' influence over the association. I believe government should explain its reasons for including this in the legislation.

Subsection 3(8) is unusual. According to it, we could have, in effect, three registrars, each vying for position or serving a special interest group. Such a condition could cause an enormous jumble of politics within the association. From a management standpoint, to give three people the same authority is generally considered bad practice. I believe government should acquaint us with its reasons for the wording of this paragraph.

Subsection 8(2) puts a bylaw in effect when passed by council. The onus of rescinding it rests with the members. Administratively, such a condition could cause problems. If the members rescind the bylaw passed by council, any action taken by council in respect of such bylaw, between the time of passage by council and rejection by the members, would be valid. I suggest the members will find this completely unacceptable, especially in view of the very large representation of government on council.

This condition appears to be very unusual. It makes me uneasy and appears to me completely unnecessary. The reasons of the government for including it should be furnished.

Section 9 requires the council to establish an official publication. The association now maintains a publication without legislation requiring it. Therefore, I am concerned over the reasons--and more concerned over the reasons than the actual words--for it being specified in the legislation. Also, I am concerned about the possibility of empire-building within the association. It seems to me section 9 will ensure this is exactly what will happen.

I suggest you consider that the association is a political institution and, like government, is complete with both elected people and functionaries. We also have government representation. In my opinion, section 9 should be omitted, but I am not the whole membership. I am only one person.

In section 10, several committees are required. While I do not know the present arrangement for equivalent committees, I suggest the government should tell members specifically what is wrong with the existing equivalent committees for accomplishing the same functions.

Regarding the proposed executive committee under clause 10(1)(a), putting this in the legislation is fraught with danger and could remove any form of control, direction or influence by the members. This is particularly dangerous when one considers that council, not the members, will select the officers, president and vice-president. I mentioned my concern over that situation previously and this compounds it.

In subsection 12(1), limited licences are allowed. I do not see in the proposed legislation any definitive definition of what the requirements would be for a limited licence. However, providing for limited licences in the legislation is fraught with danger. This would mean that anyone could take the association to court and plead for a limited licence if he or she were accepted by the admissions committee.

I am not 100 per cent sure about this, but it appears to me a limited licence is for someone who may not qualify as an engineer but who has a very specific experience. The litigation we could become involved in could be horrendous. The cost of the litigation could be astronomic. A precedent established by just one judge could over a period of time open the floodgates. Ontario, in the extreme, could well be blessed with toilet engineers, sink engineers, lavatory faucet engineers, not to be confused with slop sink engineers. That may be whimsical, but there is a very real possibility of this type of thing happening over a period. The effect on Ontario industry could be disastrous and could well guarantee foreign dominance of Ontario manufacturing.

Engineering is changing quickly. You should consider that many of our members have to change their job style and working career a few times in the course of their lives. That is not generally the case with most people. Everybody's job changes a bit, but sometimes ours are horrendous. Things do change. So while this does not affect all our members, it does affect a substantial

portion. You have to consider that it is necessary to give the guy the tools to get into that position. With these proposed conditions, one wonders if some of the members should pay a visit to the province's engineering schools, assemble the students and explain to them the consequences of this condition. How many students would remain in the schools?

Regarding subsection 12(2), this requires an individual engineer doing business for himself to have two certificates, a certificate for himself as a member plus a certificate of authorization. There appears to me to be nothing wrong with the existing legislation in this regard. As I recall, a previous deputy minister of housing suggested in the associations's printed periodical that certificates of authorization be so required. I did not comprehend the logic then and do not now.

Clause 12(3)(a) is too broad. Innocent people could be named as a result of this. Moreover, it would encourage almost anyone to build a plant, except the building. The results could be dangerous.

As I write, it is now midnight and I see little point in continuing the commentary on specific points of the proposed legislation.

In the last issue of the association's periodical were the platforms of the candidates for election to office. In the statements of the candidates, one mentioned, "A proposed clause allows for non-engineers to perform professional engineering work provided that an engineer assumes responsibility for it." One would suppose that an individual running for office on the association's council would be up to date on the proposed act. The statement of this candidate concurs with the position last stated to the members by the head office of the association. I think this member is not alone in his misunderstanding of the contents of the proposed act.

When the draft legislation was issued, all comments were to be received by the association in May of last year, very shortly after it was issued. The letter of June 15 of the association's president gives the association's comments on the proposal, some of which concur closely with those concerns raised by me. To my knowledge, none of the statements raised by Mr. Moull has been addressed. I do not know if the draft legislation I have is as it now stands, or what stands.

To my knowledge, no formal authority has been given to the association by its members to negotiate on behalf of the members. It appears to me there has been no strategy or composite program put forward to the members. It appears to me the acceptance you now have is that of the individual or individuals who made the acceptance or acceptances.

Neither I, the association president, the council of the association, the association staff, the consulting engineers' organization nor the Canadian Society for Professional Engineers can speak for the members as a whole on new legislation. The association has a full right and responsibility to speak on the existing legislation, but it has no authority, to my knowledge, to

speaking on the new one. I think I know what happened and I am going to make a suggestion at the conclusion to put it back on the rails.

It, therefore, appears that you have no authorization from the members and cannot legitimately put into law the proposed legislation, notwithstanding the first reading of the bill. You may differ. I am not a lawyer so I do not know, but it seems to me a referendum of the members will be required. Further, I expect the members will require of you full and ample explanation of the reasons for the changes you propose. Also, I am sure the members will want to see and examine legislation being proposed for other similar bodies--doctors, lawyers, teachers, etc.--before voting in any referendum.

10:40 p.m.

As I mentioned at the beginning of my talk, I think what has happened is this has now gone on for some five or seven years. What happened in the beginning, I gather, is there was an investigation by government going on at the time, which was obviously proper, under the Professional Organizations Committee. Slowly, bit by bit, it got into some new legislation. Over time, between both the association staff, the council, and the government, since it was in dribs and drabs, the members got forgotten. The fact of the matter is that this was over time. Since you are already having these hearings, I would suggest the means be gotten to get the members' sanction and get things going.

As I recall, and I am going by memory, I received this thing last March or April and we had until May to reply. You might just as well forget about replying because it was too late. It was my understanding that the legislation was to be passed in the summer session or whatever. Consequently, I do not know whether the government pressured the association or the association said, "Look, let us get the staff," or whatever, or the council said, "Let us get this damned thing out of the way and let us get it going. It has been going too long." That is my feeling. One way or another, the members have to be involved in this.

I thank you for giving me, an ordinary member, the opportunity to present my thoughts on the proposed legislation. Thank you very much. It is a pleasure. It is the first time I as an engineer have stuck my nose in the political process. We are funny guys. Basically, all of us are salesmen even though some of us are dressed in blue and others have the pinstripes of the boardroom. The fact of the matter is we are salesmen no matter what we do and we do not worry about these things. We just keep on going. Sometimes this is our undoing.

I must tell you, in the last few years I have been very heavily hit financially by the actions of politicians and government. Now, unfortunately, I am realizing my native instincts are maybe not the best thing for myself, so I have come here tonight. I hope I have not raised too much of a ruckus. I do not want to raise a ruckus. I must say I am glad, Mr. Moull, that you have encouraged a good number of your staff to come out tonight. The only staff member I know is Mr. Wardell, because there have been changes in the last few years and I have not been around the

association very much. I am very happy to see their interest. With that, if you want me to shut up and get out, that is fine, or you can ask me some questions. You have another chap to go.

Mr. Mitchell: As I recall you said you were writing that almost at midnight and tonight you are presenting it almost at midnight.

Mr. Gillies: One short question, Mr. Stewart. You sure got even with the politicians tonight.

Mr. Stewart: I have no intention of getting even with anybody. That is not my interest. What I saw is something that got off the rails and I would like it to get back on the rails. That is my interest. I do not want the wrong things done. I am just an ordinary guy.

Mr. Gillies: I appreciate that. I think your comments about the openness of the system and accessibility to what we are doing here are very valid. My question to you is very simple. If you do not have the answer, somebody from the Association of Professional Engineers of Ontario may. I assume the draft paper you held up, which several witnesses have shown us, went to all 50,000 engineers in the province?

Mr. Stewart: I assume equally and I have no reason to believe otherwise. In fact, there is a covering note from the then president, Dr. Lapp. It is not dated, so unfortunately I do not know when it was sent out.

Mr. Gillies: My question to you is that there was, as you said, an invitation to respond and there was about a month to do so. Do you happen to know, or does anyone know, how many responses came in from the mailing?

Mr. Stewart: I would think very few. I believe the question was already answered tonight and maybe the association can reply better.

Mr. Moull: I am president of APEO. The discussion draft that was being held up by Mr. Stewart was sent out approximately the end of March with about a two-month time lapse for the membership to respond. It went to all 50,000 members. My recollection is that approximately 125 replies came in, in the time allocated, and those were from individual groups, firms, and that represents about one quarter of one per cent of the membership of the association. It was a full process through that period and the responses formed the basis of discussion within council which then formed the base for a submission made to the Attorney General of things we liked and things we did not like with respect to the discussion draft.

The response subsequently came back to council, to myself on behalf of council, from the Attorney General saying yes, he agreed with some, he disagreed with others, and that was the way the process was evolving during the spring months. We did anticipate first reading of the two bills by about June, then the House rose, as I recall, and the process went on during the summer.

In parallel with all of this, there was publication in each of our copies of Dimensions, the so-called official publication, to keep the members as well-informed of the status of the new legislation as possible, and through our chapter chairmen information was well available to anyone who wanted to find out or who chose to read the Dimensions magazine.

Some members were more interested than others, some were totally apathetic. I guess the fact of one quarter of one per cent responding to the discussion draft could indicate--it may not have, but it could--one of two things: one, some apathy; the other, more positive, would be to take it as indicative of the dependence of the membership in general on what its elected council was doing with respect to the new legislation, and that new legislation not being something for the association per se to negotiate, in so far as it is a government bill and it is the Attorney General's legislation, telling us how we are being granted self-governing provisions.

Negotiation may not be the appropriate term and I am not sure what Mr. Stewart really meant by negotiation. However, there was a lot of discussion and liaison--and there had to be--between APEO, the architects, the Attorney General's department and many other interested groups which had a concern or an interest in the proposed legislation, and our own members.

Mr. Gillies: Thank you. So the answer is 125.

Mr. Elston: Were some of those responding on behalf of chapters of your organization?

Mr. Moull: Yes.

Mr. Elston: So there could be a more broad perspective placed on those 125 replies?

Mr. Moull: Yes, although it is reasonable to know that the chapter executives out in the various parts of the province did not go to their members and draw forth commentary. They may have had a chapter meeting at which the act was discussed and from that would be put forward a chapter response, but not by ballot or referendum or anything like that from chapter executive out to chapter membership.

Mr. T. P. Reid: Mr. Stewart mentioned "without share capital." Are you suggesting, Mr. Stewart, that you should have share capital and every member should have--\$50,000 into \$4 million--\$80 worth of shares, or something like that?

Mr. Stewart: There should be some provision in there. There was not in the previous act, which may be a little bit weak. But there should be some rule for distribution of the funds so that if the members say, "Okay, we want to close it down," who gets the money? You could be looking at \$4 million to find out who owns it if we decided to terminate the association.

When you add "without share capital"--government is getting bigger and bigger, and we are getting more and more government as

society is getting more complex. You keep worrying about somebody sticking their fingers in your goddamned money.

Mr. T. P. Reid: Mr. Moull, does the association make any political donations?

Mr. Moull: None whatsoever.

Mr. T. P. Reid: Send some to Rainy River.

Mr. Moull: I should point out that the figures being bandied about are decreasing at a very rapid rate, particularly for we unpaid elected people. With respect to the point regarding "body corporate and without share capital," I would have to defer to Mr. Fram to respond to that.

Mr. Fram: It is just alternate terminology. In the bill, we have provided for those provisions of the Corporations Act that apply. It was just alternate terminology. It means they are not investors and since the winding up provisions of the Corporations Act do not apply, an act of Parliament is necessary before the corporation can be wound up.

Mr. MacQuarrie: So you could always come back just before it is wound up, if it is ever wound up.

Mr. Chairman: Is there anything further for Mr. Stewart?

Mr. MacQuarrie: Mr. Stewart, we appreciate your comments and the ministry will certainly give them every consideration.

Mr. Chairman: Okay, thank you.

The last witness may proceed.

M. B. ZAKARIA

Mr. Zakaria: My name is Mohammed Belal Zakaria. I was born in India but I lived in England for almost 13 years before coming to Canada. I studied in England and gained experience as a professional engineer for almost 10 years, and that was 10 years ago. In the last 10 years, the Association of Professional Engineers of Ontario has pulled me down to where I was 20 years ago. The intent of this presentation is to provide material about how it happened.

I will read this brief presentation which I typed myself a little earlier. This is with regard to the Professional Engineers Act, regulations, bylaws, code of ethics. A membership application was rejected in 1974 and file number 3451 was opened in 1975. This resulted in the involvement of two law firms, MPP Tony Lupusella, the police, the Ombudsman, the Ontario Human Rights Commission and this presentation in 1984. There is still no solution for someone who was a qualified and highly trained engineer until 10 years ago.

In this act, it says Her Majesty enacts academic requirements, licensing, certification, council, a complaints review committee, registration of engineers and businesses to

establish, maintain and devise standards of qualification, skill, code of ethics, safety and welfare, and the association's power to act as a natural person.

A summary and analysis of the problem, 1974-84. In 1974, a written letter for membership remained unanswered. In 1975, there was a reapplication and opening of file number 3451-75 by Mr. H. N. Majithia, secretary of the examinations department. Qualifications submitted were a B.Sc. from Calcutta University, India, with subjects that sound very fundamental but I will read it: algebra, statistics, electricity, magnetism, heat, light, sound, statics and dynamics, chemistry, organic chemistry, physical chemistry, calculus and so on.

The next qualification submitted was a post-graduate diploma in chemical engineering at the University of Surrey, United Kingdom, with subjects in chemical engineering and, of course, the equivalent professional engineers association examination in England; exempted from all the written examinations except a thesis to be written at home without supervision of the association of that country.

Industrial experience included 10 years between 1961 and 1973 in England. I am here to show that I have gained the same experience as a professional engineer as one would do here after getting a licence as a professional engineer. I bumped into some people here. A number of qualified professional engineer certificate holders like Jack Ritchie, G. Sahayda and Sam Chiu, etc., have gained experience in the field of chemicals, polymers and chemical equipment for more than 10 years, as I did prior to applying for membership in the APEO.

Many other professional engineer certificate holders in Canada went to work for companies like Tioxide Canada, CIL Inc., Hoechst Canada Inc. 10 years ago and have increased their earnings from \$18,000 a year to \$45,000 per annum and higher. I had gained the same experience with the same companies, using the same technology and the same trade name products, except that was in Her Majesty's country, England, United Kingdom.

Upon submission of this membership application, a regulation requirement was sent to me in 1973. I have a copy here. It is the additional letterhead. I have 1027 Yonge Street, although it seems it was printed in 1973. But in 1973 the office of the Association of Professional Engineers of Ontario was located at 970 Yonge Street, not at 1027. They did move to 1027 some time around 1975. This is the time I received these rules and regulations.

Their rules and regulations stated that for academic requirements from a United Kingdom applicant, he needs a bachelor's degree in engineering upon completion of ordinary or pass degree, normally accepted by the council of the Association of Professional Engineers of Ontario as exempting him from the association's examinations.

There is also membership of the engineers' institution in England, provided their academic qualifications are proven to be at least equivalent to the higher national diploma in the United

Kingdom. if the UK institution will certify that at the time of election to membership the overall qualifications were considered to be at least equivalent to those of a holder of an ordinary degree in engineering.

I have a letter from professional engineer De Groot, the secretary of the board of examiners. It is at the back here. She says, "I am forced to the conclusion that the diploma which you hold is not the equivalent of an honours degree," but it is equal to an ordinary or pass degree. It seems to me they did approve the qualification there.

11 p.m.

I also have other letters--it was not possible to submit all the correspondence--where they confront this. That was more than adequate to say I have qualifications from England, from the University of Surrey, which is fully recognized by the Association of Professional Engineers of Ontario. Also, the letters sent by the University of Surrey in England clearly stated I was exempted from all the written examinations as equivalent to the association of engineers in England and fully recognized there too.

In other words, I had recognized qualifications from two different angles, one from the University of Surrey and, later, confirmation by the university that the association of engineers in England fully recognized my qualifications and I had passed all the written examinations of that particular institution.

Then the problem started, which is outlined in my letter as follows: On May 6, 1977, examinations required by the board of examiners were algebra, statics and dynamics, organic chemistry, physical chemistry, unit operations, transport phenomena, process dynamics, chemical technology, professional practices, and thesis. Exemptions were allowed in calculus, statistics, electricity, magnetism, heat, light, sound, mechanics of fluids, materials science, thermodynamics, nuclear chemical reactor engineering, and so on.

The applicant, the Ombudsman, the Ontario Human Rights Commission, the Globe and Mail, Tony Lupusella, the member of the provincial parliament, questioned that it is almost impossible to pass exempted papers, such as nuclear reactor engineering, without first passing algebra and physical chemistry. They also said that Mr. Zakaria seems to be qualified from the University of Surrey alone and seems to be qualified from exemptions from the written examinations of the institution of engineers which is also considered as equivalent to a qualification. Based on the Professional Engineers Act, anyone with a slight deficiency in qualifications but with six years industrial experience from a recognized industry will be considered as fully qualified. There is no basis in giving exemptions from papers such as nuclear chemical reactor engineering and asking for examinations in algebra.

The letter dated October 21, 1977, from Lois C. De Groot, P.Eng., secretary, board of examiners for the Association of

Professional Engineers of Ontario states, "I am forced to the conclusion that the diploma which you hold is not the equivalent of an honours degree from the University of Surrey, although probably not far from it." But the other letter said it was equivalent to a passed degree which it will recognize and the academic requirement says that it is recognized.

Then there is the letter dated July 17, 1980, from Mr. J.O. Harold, director of admissions for the APEO, who was the registrar of the association. This letter is addressed to J. Alexander Menzies of the law firm of Menzies von Bogen regarding Mohammed B. Zakaria.

"Following due consideration and review of his academic qualifications and work experience...the MPP, police, the office of the Ombudsman, the Ontario Human Rights Commission, the law firm of David and David, and the Globe and Mail since 1975 have reviewed this entire matter in some detail without, to our association's knowledge, finding any evidence which would support Mr. Zakaria."

They never asked Tioxide Canada about their parent company in England which, with the main R and D facilities is 97 per cent bigger, or rang the Surrey University telephone number. They did not do the remotest thing in settling a dispute since 1974 while keeping me without a licence to work in Canada for the past number of years in complying with the Professional Engineers Act which provides for council, complaint review committee, etc., all within the framework of the act and also the Association of Professional Engineers of Ontario.

Mr. Harold's letter also states that, "upon legal advice, we will make no response" to Mr. Zakaria's letter.

A letter to the council also included here verifies that they do not wish to refer my letter to the complaints committee, as well as the council, about which another letter has been sent. That letter itself deals with some of the regulations.

Regarding the letter, which also states that they have had no findings in support of Mr. Zakaria to the best of the knowledge of the association, the fact is completely different. The fact is that I have the letter from the Office of the Ombudsman, file number 19536/78. I have never included it because I felt it was not required to make a big bunch, but it could be very good. It says:

"A member of our staff did contact the registrar, Mr. Harold, and was advised that you did not possess the qualifications." That resulted in many meetings and changes. Finally, it was reduced to almost no examination, but an appearance in at least one engineering paper was required for legal reasons to avoid payment of compensation.

"However, we do not have jurisdiction to investigate any complaint because the APEO is not a government office." In other words, the Ombudman's office had no jurisdiction to question the appeal because it is not a government department.

"The alternative for you is legal action." This is contrary to the letter by the director of admissions that the Ombudsman did not find any evidence supporting Mr. Zakaria. They simply did not have access there to go and investigate, and this was contrary to the claim by the director of admissions that the Ombudsman did not find any evidence.

Mr. Greg Taylor of the Globe and Mail was told the reason for denial of a work permit or replying to one letter a year is due to the fact that a mistake had been made and it is time-consuming to change examination programs for Mr. Zakaria, which they say they have have changed so many times so far from nine papers required to almost nothing, with the association of engineers in England qualifications and the industrial experience being non-negotiable.

Human rights officer Mr. Wesley Mackenzie was told that the APEO has members from all over the world and the jailed examination secretary, in fact, was of East Indian origin, the same as Mr. Zakaria, and the human rights case is based on age, sex, colour, race and the ethnic origin.

The visiting officer did find members and staff of mixed race, of various age groups, male and female. Whether algebra is eight years smaller than an engineering qualification or it does not take five years to make alterations in exemptions, then reinsertion, then back to the original situation by removing the reinserted subjects, etc., is none of my business.

Again, this is contrary to the statement by the director of admission that the office of the human rights commission did a satisfactory job for Mr. Zakaria and could not find any evidence.

The police had provided me with the jail sentence report of the secretary of the APEO examinations department, which is again contrary to the claim by the registrar that the police did not find a thing, which is also in the letter here.

The same applies with the law firms of David and David, barristers and solicitors, and Menzies vonBogen, who have declined to take legal action on my behalf at the assurance of the director of admissions that the council, complaint review board, and president of the APEO have satisfactorily resolved Mr. Zakaria's problem, which is not entirely true either.

That is also a statement here in the letter. The fact is that I am still without a licence to work in Canada and the Professional Engineers Act seems to be worthless to me.

All this factual information has been provided very briefly and it is available in full description, if any particular aspect is required.

Mr. Chairman: Thank you, Mr. Zakaria. Mr. Elston, you had a question first, then it is Mr. Gillies and Mr. Reid.

Mr. Elston: This is maybe just an observation. It seems to me some of your concerns are similar to those of Mr. Sablatnig, who spoke to us earlier about the qualification and accreditation process. Perhaps part of your difficulty would be alleviated if there was some kind of an appeal process.

Mr. Zakaria: If there was any communication system, but unfortunately, it seems to me there is no communication. In other words, I have been shot right at the beginning. Until now I have had no access to move.

In order to rectify the small, simple, minor misunderstanding one has to communicate. The only way you can communicate is by writing letters. But when you write letters, as has been done by the director of admissions, they are not replying to letters for legal reasons, or this and that.

11:10 p.m.

If there is access, if you have a complaint, you complain to the review committee. We have a council. In going to the council or going to the complaint review committee, it did not reach any farther than the office clerk's desk there. Probably the review committee, the council, and all those people are not fully aware of this problem. They may have been briefed in a meeting of some kind that there have been some basic problems--this and that.

In fact, there are a lot more people. There is also a letter included from the office of the (inaudible). The other departments in Ottawa are also aware of this. They are all helpless because everybody has to go on, based on this act. As I said, I do not have the finances for any more legal action. Without a licence, I don't work either.

The basic idea of what I am trying to say is that I did fight this very nicely until--eight years--close to 1978 or 1980. Then I stopped. In other words, I lost my track and I found myself working in industry. I do not know how. I must have lost my nerve actually, to tell you frankly, in the sense that I no longer had control of the situation. All of the other measures which I was supposed to take failed. I simply could not reach the council or the complaints committee or anybody. The legal process was denied, and no other method exists. Three years ago I found myself working in a very large industry in Rexdale as a security guard.

It is unbelievable, but I was a security guard for seven weeks. Then they hired me as a quality control inspector in the laboratory and in the plant. That was a very big shock to them too. One moment I was at the door and the next moment I was inside sitting with the engineers and the managers. In the laboratory, they do graphical, modern, computerized, sophisticated instrumentation.

They found out I was more than a quality control technician or inspector--my application with APEO has been pending for more than 10 years. I lost the job a few months ago. Now I have realized--and I have included one brief newspaper cutting--that in

this country, industries ask you if you have a certificate from APEO. There is really no need for it for every single small job, but unfortunately they ask for it.

The only benefit I can see from the self-governing institution in Canada called the Association of Professional Engineers of Ontario is that whoever owns this organization is getting a nice, cool \$25 million, \$30 million, \$50 million or \$70 million a year in revenue. They are not quite in the position to manage it because it covers all the different aspects of the engineering profession.

In England, for instance--just for reference--they have different engineering associations. They are subdivided and each specializes in an area, such as chemical engineering, mechanical engineering, architectural engineering and so on. Each of these institutions is like APEO. On top of that--that is where the examination requirements are. You have to have the requirements for passing an examination.

It is like APEO. You pass the examination and you are now fully recognized by the association there and you go and gain experience. After gaining experience for a number of years, you are called a chartered engineer. You have to gain all the qualifications and experience required and so on. Therefore, you are in a separate body which is like APEO.

In Canada only one APEO is doing the job of all these associations. This job is almost impossible to manage. It is like having one office with two clerks to manage the whole world. It is virtually impossible to manage it.

Mr. Elston: Perhaps I could just address a comment to the parliamentary assistant to the Attorney General. Since this is the second individual this evening who has come to us with respect to a concern about accreditation, there is a possibility that there might be a chance to take a long look at the appeal process.

Perhaps you could assure us that when dealing with the regulations, as you mentioned to Mr. Sablatnig, you will address that concern. I think that since the president of the Association of Professional Engineers of Ontario is here this evening, Mr. Zakaria is being offered a forum to put forward a concern that he has had for several years--

Mr. Zakaria: It has been almost 10 years.

Mr. Elston: --and that he has been unable to put forward before.

Perhaps it is worth while for the committee members to take Mr. Zakaria's concern--and Mr. Sablatnig's concern--under advisement. It really is a matter of people from other countries who have engineering training and qualifications. Perhaps we could agree to look at the qualification process.

Mr. Gillies: Mr. Zakaria, for some time, I have had a concern about the equivalency of qualifications in a number of our

professions. I fought a case for a constituent of mine with the College of Physicians and Surgeons, which we did not win. In that case, several years of education were going to be required of her here. If I am to believe the letter from the APEO to yourself--no, pardon me, to--

Mr. Zakaria: Mr. Menzies.

Mr. Gillies: --to Mr. Menzies from J.O. Harold of July 1980, is it true that what they were requiring of you, on top of the qualifications they accepted, was one three-hour exam and one hour-and-a-quarter exam? In view of the extraordinary lengths you have gone to be accepted in the profession, was that really all that was standing in your way? Or is there one or two--

Mr. Zakaria: What happened, as I said, is a very simple question of identification, of admitting their mistake. What has happened in this particular case, as I said in my letter in paragraphs two and three, the Association of Professional Engineers of Ontario had asked me to appear for examination in algebra and gave me an exemption for other papers. The start was wrong. Then the rest of the (inaudible) was tremendous. In other words, they would like this (inaudible) meeting once a year. It has to be presented to the meeting and then slightly modified, then again modified next year and modified the next year.

Eventually, they came up with a situation, but there is no basis for asking that kind of exam. In other words, they have two types of situations. One is they say that if somebody comes from a university, say, in eastern Europe or even Vancouver, for that matter, it is not recognized. But there are a few institutions which are fully recognized. One is a very good one, the University of Toronto. The universities in England are fully recognized whereas those in New Brunswick and other places in Canada are not recognized.

The mistake has been made. That paper just says they asked Mr. Zakaria to appear for one engineering paper for the sake of appearing. First, it does not justify it. Then it came so late that by that time I had already landed in that state of mind that I was not in a position to appear or go for the course. I completely lost my savings, the house and everything.

As well, I was under a mental strain. I have a couple of letters from couple of doctors--

Mr. Gillies: I am sorry. I do not want to interject, but I wonder if by that point you questioned whether you were up to writing the exams because of the strain you had been put under--

Mr. Zakaria: Yes.

11:15 p.m.

Mr. Gillies: --then, at this point, you are looking more for redress to what you see as a series of wrongs, as opposed to now being able to practise as an engineer. Because I am just assuming that if you did not feel that you were able to fulfil the

academic requirements, would you feel now that you could carry out the work of a professional engineer?

Mr. Zakaria: Let me give you a very good example also in that respect. As a noncertificate holder, without having to--I mean when I had been regraded as a grade 9 algebra certificate holder, and I did not really know how to work or find a job, I did manage to find a job in the chemical engineering profession. The profession which I was doing was right in the Professional Engineers Act of 1972. It says that the Professional Engineers Act specifies that as a professional engineer one could work on a water treatment plant.

Somehow I found myself selling water treatment plants with the plumbers. It is really amazing that the law requires that only professional engineers are supposed to sell water treatment plants, but the plumbers are selling water treatment plants to industries.

I started getting experience and I gained experience for a number of years with that profession. Of course, I was fully qualified in doing it' therefore I was mending the work deficiencies of these plumbers. I was visiting industries and correcting their mistakes because they were supposed to do calculations before providing this kind of plant and packing system, and I was correcting it.

I provided this information, that I had gained also this experience and that I was still getting experience, at the meeting which they had given me at that time. That was also pushed aside because their concern seemed to be that it was only to hide how algebra in figuring to do higher math five years took them to modify one subject a year.

Mr. Mitchell: I was just going to say, Mr. Chairman, that I think we understand, in fact, the points Mr. Zakaria is attempting to make. Mr. Elston has already addressed my reading of what is being talked about here. If we can address it in the fashion that he proposed, I think we have discussed this issue to the extent that we can this evening.

Mr. MacQuarrie: The ministry is not prepared to accept that and to address it in the fashion that he proposed. We indicated I think that we would look at the question of making personal representations in respect of experience qualifications, but--

Mr. Laughren: And accreditation.

Mr. MacQuarrie: --as far as carrying appeals further and so on, the ministry is giving no assurances to that effect at all.

Mr. Elston: But you are considering--

Mr. MacQuarrie: We indicated we would consider the question of this one clause there where it said that the committee did not have to hear the individual or say anything whatever.

There was no right to make representations. I am paraphrasing the clause.

Mr. Chairman: Mr. Gillies, have you anything further to add?

Mr. Gillies: That is all. Thank you, Mr. Chairman.

Mr. Chairman: Mr. Reid?

Mr. T. P. Reid: My question was answered about the writing of the exam.

Mr. Chairman: Thank you, Mr. Zakaria. We apologize for the lateness and we thank you for being with us.

Mr. Zakaria: Thank you.

Mr. Chairman: Thank you again, sir.

Mr. T. P. Reid: Mr. Chairman, just before we do adjourn, since Mr. Moull is still here, I do not know if it was made clear or not, but I wonder if we could ask Mr. Moull to provide us with the number of discipline cases or competency cases and what was involved in those in the last five or six years so that we will have some kind of evidence before us on which we can make some judgements.

We do not need the names, addresses or any of that, but simply the number of cases each year, where they were at, whether it was misconduct or incompetence, what was the resolution of those cases and whether there was any lawsuit and any insurance involved. Would that be possible?

Mr. Moull: We will get as much of that as we can for you.

Mr. Chairman: Thank you, Mr. Moull.

Mr. Renwick: Mr. Chairman, about sitting tomorrow evening, have the arrangements been made for the witnesses who were to come on Friday to come tomorrow evening?

Mr. Chairman: Yes.

Mr. Renwick: How unfortunate.

Mr. Chairman: Friday looks good though, does it not?

With that, we will adjourn this evening and we will meet tomorrow morning at 10 o'clock.

The committee adjourned at 11:24 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT
BILL 123, PROFESSIONAL ENGINEERS ACT

WEDNESDAY, FEBRUARY 1, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
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Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

MacQuarrie, R. W., Parliamentary Assistant to the Attorney General
(Carleton East PC)
McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

Witnesses:

Brohm, D. R.

Rayman, I., Past President, Ontario Association of Architects;
Chairman, OAA's Act Task Force

Youssef, T. N.

From the Consulting Engineers of Ontario:

Douglas, M. C., Director

Goodings, W. D., Member, Legislative Committee

Weihs, H., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 1, 1984

The committee met at 10:05 a.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT
(continued)

Resuming the adjourned consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

CONSULTING ENGINEERS OF ONTARIO

Mr. Chairman: Gentlemen, I see a quorum. The first witnesses this morning will be from the Consulting Engineers of Ontario: H. Weihs, president; M. C. Douglas, director; W. D. Goodings, member of legislative committee; Ross R. Reid, executive director. We are just waiting for the distribution of the briefs, Mr. Weihs. You may proceed, sir. Please introduce your colleagues.

Mr. Weihs: Mr. Chairman, I am Harry Weihs. I am the president of Consulting Engineers of Ontario. On my left is Mr. Douglas, on my immediate right is Mr. Reid and on my extreme right is Mr. Goodings. We are all officers and representatives of the Consulting Engineers of Ontario. Mr. Douglas, Mr. Goodings and myself are also senior executives of consulting engineering companies. Mr. Reid is the executive director of the organization.

I appreciate the opportunity to appear before you today. We have submitted a brief to you which states our position. I do not intend to read it. It is well known that engineers are illiterate, can barely read and certainly cannot write. Therefore, I will simply summarize the main points of our brief and pass some comment upon it.

We are substantially in agreement with this legislation. We participated in the many discussions leading up to it and, by and large, we think it answers the needs of protecting the public and making it possible for engineers to function effectively in the interests of the province and their own business organizations.

There are, however, some concerns we have which we would ask this committee to take into account and pass on to the Legislature, as it will consider and eventually pass this act.

A word, first, about who we are. The Consulting Engineers of Ontario represents the business interests of the consulting engineers of this province. There are 360 member firms representing some 10,000 employees, and the business carried on by these companies is of considerable size even though this is small business. Consulting engineering in this province and across the country is small business, but it may be of interest to you that

across the nation the total billings of consulting engineers amount to almost \$1.7 billion, the major part of which, about \$1.35 billion, is domestic business and about \$350 million is export-oriented business. These are 1980 figures.

The major part of this billing takes place in Ontario. It will be interesting to know that probably 40 to 50 per cent of the foreign work carried on by Canadian consulting engineers is done by Ontario consulting engineers. The total domestic billing probably amounts to \$500 million or more in this province.

You can see we play an important part in the business life and the economy of this province, of particular significance in ensuring the development of industry and its stature in the world market.

We are small business, as I said, and in this regard we share all the problems of small business; but we are also professionals and in that sense we carry the double burden and the double honour, I would rather put it this way, of providing service of a high professional standard while being able to withstand the difficulties of an economic climate which in the past three years certainly has not always been easy to cope with.

The legislation that is before you separates and makes a distinction, wisely, between the business of engineering and the practice of professional engineering. This is a new twist to the legislation which has been introduced wisely and will serve this province well in ensuring that those who offer services to the public are properly qualified and regarded as such by their peers through the Association of Professional Engineers of Ontario.

We think the direction taken by the legislation in requiring everyone who would offer services to the public and who would practise professional engineering to be a member of and licensed by the association ensures that the quality of engineering is maintained, the public protected and the interests of the community safeguarded. We have always opposed exemptions of any kind, industrial or otherwise, of this requirement of registration and licensing by the parent body.

My colleagues and friends of APEO have acquainted you with the history of the act, and I will not repeat that. I will deal now with some of the concerns we have and some of the items we would like you to consider when you go to clause-by-clause examination of the act.

The legislation provides that all those who would offer services to the public must carry professional liability insurance. We can see the wisdom of this, although we also see difficulties and problems involved in that. Most of the members of our organization carry such insurance now and would not wish to practise without it.

It is probably wise that the legislation now requires that all those who would offer services to the public carry this kind of insurance, but surely if the public interest requires that engineers offering services to the public should be covered by

professional liability insurance then that must be universal and everyone offering services to the public ought to carry such insurance.

We are concerned, we are perturbed and we are worried about paragraph 7(1)25, which gives the council of APEO the right to exempt by regulation certain classes of engineers from carrying that kind of insurance. This is a dangerous element and it contradicts the very purpose of the legislation.

If it is necessary that such insurance be carried by practitioners, then let it be universal. I ask that this committee recommend that paragraph 7(1)25 be deleted in its entirety. I understand that the minister will be presenting some amendments, and this may well be one of the items he will be--

Interjections.

Mr. Weihs: In making this firm statement before you, I am not doubting for a moment the wisdom of the Attorney General (Mr. McMurtry) and his staff in seeing the justification of our position, but there has been so much to and fro, as there should be, in the discussion of this act that I would like to place our position before you without question and without any hesitation.

Mr. Chairman: Before we start, Mr. Fram, have you something to say on this?

Mr. Fram: Yes. The government will be moving to strike out that clause for the reasons given.

Mr. Renwick: Which are?

Mr. Fram: They are essentially that, since professional engineering has been defined as only those things that constitute a risk, therefore there should be no exemptions from the obligation of carrying insurance on those providing those services to the public.

Mr. Renwick: Who was it intended to exempt?

Mr. Fram: It was just a safeguard mechanism. Originally, it was put in because the definition was much as the definition is now, that professional engineering was drawn along the basis of the existing act; but, further, it involved persons who did not provide professional services in areas that constituted risk to the public.

As the definition has evolved, it now requires that to be professional engineering within the licensed scope of practice it must raise concerns related to safety, health, property or the public welfare. If there are those concerns, it is incumbent upon the person providing those services to the public to carry insurance.

Mr. Chairman: Thank you, Mr. Fram. Are there any questions?

Mr. T. P. Reid: You have given us some interesting statistics on the first page. Can you tell us what the average billing might be in the typical situation where I hire you or your firm as a consulting engineer? Are we talking about \$50,000 or \$100,000?

Mr. Weihs: Not at all. Particularly in the field of consulting engineering, we are speaking of projects from as small as \$10,000 total value to many hundreds of millions of dollars. I do not think it would be easy, and I certainly do not have available any statistics on an average figure of what the value may be.

If you are concerned about the insurance coverage, I may add it is my suspicion that the drafters of the legislation had in mind the protection of the smaller client, who may be less knowledgeable. When you are dealing with the Stelco, Inco and Canada Packers, these are very knowledgeable clients; they know all about professional liability insurance and they negotiate directly with the consulting engineer how they should be covered.

I believe, and I see Mr. Fram is nodding, that this was intended for the less knowledgeable engineer--client, rather. We have no less knowledgeable engineers. Just as politicians, all engineers are very capable and competent.

Mr. T. P. Reid: You blew your argument there, I am afraid.

Mr. Breithaupt: Most politicians are capable of anything.

Mr. Weihs: I think this is the intent, but I cannot give you an average.

Mr. T. P. Reid: Frankly, I am not wild about giving the insurance companies some windfall business on this. Is this going to increase drastically the cost of doing business for your members?

10:20 a.m.

Mr. Weihs: It will increase the cost of doing business for some members. Quite frankly, we are concerned what the total will be; we are not sure of that. This was one of our concerns which, as Mr. Fram will remember, we discussed at length with the Attorney General, whether the requirement for a compulsory insurance coverage might work towards higher premiums and, therefore, a greater cost to the public.

I think this is a tradeoff. We are looking for protection of the public versus higher insurance premiums and higher engineering costs. I do not think it will substantially alter the price structure of consulting engineering.

We are more concerned, Mr. Chairman and Mr. Reid, that it may well lead to a large number of litigations. I will deal with that under the next item when we speak about section 36.

Mr. Mitchell: Supplementary, Mr. Weihs: A number of witnesses have said, as it sits, most of the members already do carry insurance. Am I correct?

Mr. Weihs: I would say the overwhelming majority.

Mr. T. P. Reid: One further point, if I may: You indicated very strongly at the beginning that your association is in favour of the legislation. You are satisfied your members and your group were and are aware of the legislation. Did you respond to Mr. Moull and the APEO on the legislation?

Mr. Weihs: We have had extensive discussions with APEO, with Mr. Moull and officers of the association and with the Attorney General. We have reached substantial agreement--there is always some give or take, as you know--about the main thrust to the provisions of this act, except for those items I will be dealing with today.

Mr. Renwick: This is straight ignorance on my part. Does an engineer who is in the employ, say, of Ontario Hydro have a certificate of authorization?

Mr. Fram: No.

Mr. Renwick: So we are not talking about spreading the risk to employees.

Mr. Fram: No. We are talking about those companies, partnerships and firms that are directly offering services to the public; that is, the ones that have their shingles out and--

Mr. Renwick: The membership of this organization?

Mr. Fram: Exactly.

Mr. Renwick: What is the cost of the insurance? Is it expensive? Is the loss risk high or low? What is the experience?

Mr. Weihs: The cost, Mr. Renwick, is high, by and large, in terms of the operation of a company and low in terms of the total turnover. It is a complicated mechanism, if I may just take a minute, Mr. Chairman. There are several variables: how much coverage for how many incidents, how much deductible and what is the history of the company? All these questions enter into that situation.

I will give you an example. A company doing \$2.5 million worth of business in fees probably would pay somewhere in the order of \$20,000 to \$35,000 in professional liability insurance if the deductible is between \$25,000 and \$50,000. These are round numbers. That is a lot of money but, by the same token, it is protection for the public and it is protection for the company itself.

If you carry on a service business, which is based on the activity of human beings, who are fallible and less than perfect, you might expect in the course of 35 years of activity some

mistakes will occur. The wise businessman, the wise entrepreneur will protect himself against disasters of this kind.

Mr. Renwick: What is the loss experience in the last five years, for example, among members of your association? Have there been any claims against this insurance that have been paid?

Mr. Weihs: It is very difficult for me to answer that because the definition of a claim is somewhat vague. I will be dealing with that under the next item. A claim may be either an indication that something could go wrong or an actual statement of fact that something has gone wrong.

Mr. Renwick: What losses have actually been paid?

Mr. Weihs: Large ones, probably. Many of them are settlements.

Mr. Renwick: Can you give us an example?

Mr. Weihs: No, I cannot. Many of them are settlements; in other words, if there is some doubt. Engineering is a complicated business, in many ways more complicated than law. If a bridge collapses, the fault could be in many areas. It could be a construction fault, bad materials, bad workmanship or faulty design. There could be a little bit of faulty design together with all these other things. The general mechanism is that in looking at a potential claim the insurer, the insured, the aggrieved client or the aggrieved public sit down together and try to arrive at a settlement before litigation is commenced, because as you know litigation tends to be expensive.

Mr. Renwick: Are there members of your association who do not carry insurance at the present time?

Mr. Weihs: I suspect there may be some. I know of one which does not. It is a very prominent and reputable company which operates in an area where it considers itself to be so supreme that it does not think it can make mistakes. This is a business decision. There are some firms which carry their own insurance. If they are large enough, they set aside funds to cover their own insurance.

Mr. Renwick: Will the premiums be rated across those who will have to pay the premiums in some fair and equitable way? What is the way in which the risk is shared? Is it an individual policy with each firm?

Mr. Weihs: Each firm has its own insurance, it carries its own insurance and covers and pays its own insurance. It is a part of the cost of doing business. It is a part of the overhead and it has been so for many years.

Mr. T. P. Reid: I was not aware that the fees would be so high. I can understand it on some large projects, but does this have the potential for putting any of your members out of business, by not being able to pay these fees?

Mr. Weihs: No, not at all.

Mr. Goodings: I could give some numbers. The normal rates are in the order of \$1 to \$2 per thousand dollars billed, which could amount to \$40 to \$80 per employee per year. Those are the kinds of orders based on our experience and assuming the company is of a makeup similar to ours and with that kind of billing. This does not represent a formidable loss. I am sure some people will advise you on the nature of claims but many of the claims approach \$500,000.

You ask about the experience in the last five years. The problem is increasing. Obviously, we are becoming a more and more litigious society and so the claims experience is modifying and getting worse in terms of the kinds of settlements. More and more engineers are being drawn as third parties into disputes between, say, owners and contractors. It is getting to be an increasingly onerous problem. We are experiencing that in our own practice.

Mr. Chairman: Mr. Weihs, I understand you still have something to present.

Mr. Weihs: Yes, I have several more items.

Mr. Chairman: Would you complete the items and then we will come back to the general questioning.

10:30 a.m.

Mr. Weihs: I will be pleased to do so. Our major concern relates to section 36 of the bill and ties in with the questions that have been asked with regard to insurance. What does this section say?

Section 36 gives the right to the registrar of the association to request and receive any documents, any information in the hands of an insurer, concerning a claim. Under the definitions, you will find that "claim" is not defined. That, in itself, poses a major problem. We believe this section is dangerous, against the public interest and constitutes a threat to the security of consulting engineers and their companies.

It has been stated, and we have discussed this matter at length, that the sole purpose of this act--and I agree with this wholeheartedly--is to protect the public. But so is all legislation. All legislation is designed to protect the public interest.

I know the Legislature has been very careful to protect also the right of the individual, protect the individual against the need to incriminate himself, and, furthermore, it has been careful to safeguard the integrity and privacy of information between those who represent a man's interest and himself. I think this section violates this whole principle and I would suggest, with due respect to the much wiser legal members of this assembly, that it may in fact contravene the spirit of the Charter of Rights.

More than that, it acts against the public interest because

the public interest demands what we were just talking about before, a speedy settlement of claims. Let me explain to you how the insurance process works.

Because of the complexity of claims, consulting engineers are required to report to their insurer any incident which may potentially lead to a claim. At this point, all we know is that something has happened. We do not know who is at fault. We do not know whether the client will make a claim. All we know is that it is an incident. The insurers require that we report this immediately so that they can proceed to examine it, gather information, and, if necessary or if possible, bring about a speedy settlement.

The communication between insurer and insurant at this point is of a highly hypothetical and questionable nature and it works because we do not hesitate to immediately pass on that information. If that information is available to the disciplinary body, I can assure you that nobody in his right mind in a consulting engineering company will provide such information to the insurer without first having checked with his legal adviser, with his solicitor, to ensure that he and his company are protected. In doing that, we defeat the very purpose of the legislation.

I would urge you to recommend to the Legislature to delete this. I would urge the minister to recommend its deletion because we think it is not a good provision. We think it holds danger. It violates the privacy provisions of much of the other legislation, it will impede the settlement of disputes and will act against the best interests of clients.

You can imagine what will happen if negotiations are in place for a settlement of a specific claim. At that point, information becomes public in some way, in a way that this passes beyond the confines of the insurer and the insurant, and somehow one of the parties to the negotiations becomes aware of it. There will be no settlement. There will be litigation. We think this is a dangerous, bad piece of legislation, if I may say so, and I would like it to be deleted.

Hon. Mr. McMurtry: We agree that at the very least the section can be substantially improved. We would like to amend it. We will draft an amendment which we hope will address all your concerns. We agree the section in its present form is clearly unsatisfactory and we will have an opportunity of discussing our proposed amendment with you as well as the members of the committee before we go to clause-by-clause in early March.

Mr. Weihs: If I may just add, section 34 of the act gives the registrar sweeping power to appoint inspectors, invade premises, take away books, do everything a police force is able to do and perhaps more, when a suspicion exists that a crime has been committed; in this case, a misconduct has been committed. We support that provision. We support it because we, too, want bad practitioners removed and disciplined but, having this vast power under section 34, I do not see the need for section 36. I thank you, Mr. McMurtry, for your assurance of a substantial revision

or, preferably, a deletion.

I know the insurance industry involved in professional liability insurance has made representation to Mr. Fram and has urged from its point of view that this be deleted in the interests of a better functioning of the insurance process.

I will move on to the next one. It is a simple one and I know it will be taken care of. In paragraph 12(6)8 it says "an architect or a professional engineer." That is not in keeping with the rest of the law. It should state "an engineer and an architect" in our bill. In the architect's bill it will say "an architect."

Hon. Mr. McMurtry: I think we agreed to that yesterday.

Mr. Weihs: I am mentioning it here.

Section 48 deals with the establishment of a joint practice board. If I may take a minute here to provide some background, the architects claim they have given away the store to the engineers in their bill. We say we have given away not only the store but our suits, our clothing and underwear to the architects.

Hon. Mr. McMurtry: A good starting point for a consensus.

Mr. Weihs: Be this as it may, what has happened is the understanding that existed before, that engineers could do whatever architects would be permitted to do and vice versa, has been removed. That understanding has been removed by the bill and we support it.

There are a number of practitioners who have in the past, because of this understanding of the past legislation, practised in the field of architecture and, vice versa, architects practised in the field of engineering. A joint practice board will be established under the legislation composed of three architects, three engineers and an impartial chairman who will consider applications for grandfathering of those who feel they have practised successfully in the other field. We think that is good. We support that also.

10:40 a.m.

The problem arises that only the council of the Ontario Association of Architects and the council of the Association of Professional Engineers of Ontario can license a practitioner, and again we support that. The present councils of both organizations are composed of most honourable men, but assuming the time could arise when one of those councils would be composed of less honourable men, we are concerned what the process might be if a recommendation is made by the joint practice board and then ignored by council. We only suggest, and we would ask, that this section be amended by making it mandatory for the council that has refused to comply with the recommendation of the joint practice board to state its reason for doing so in writing.

Hon. Mr. McMurtry: A good suggestion.

Mr. Weihs: Thank you. The concern under subsection 15(3) is that, as the law is written at the moment, a partnership of corporations among which one holds a certificate of authorization may be given a standard certificate of authorization rather than a general one.

In today's climate, where Ontario engineers compete with engineering companies across the land, it is frequently necessary for all kinds of temporary and permanent associations to be formed. These associations, these conglomerates, these joint ventures would then be able to compete in the marketplace more effectively. We see no reason why subsection 15(3) could not be changed to provide that a general certificate of authorization be given to a partnership of corporations where one member holds a general certificate of authorization. I think this would help. It would also assist several existing companies which are in the position of facing great difficulties if this is not done.

Those are our major concerns. We know that the flesh and the blood of this act will be expressed in its regulations. We trust that those regulations will be published in good time, that the Attorney General, as he has done with this act, will allow interested parties to have their say, make their presentations and negotiate with regard to the regulations before they are promulgated.

We have, in that same vein, a minor concern which I am simply mentioning to draw the attention of the Attorney General's department to it, and that is, since the Architects Act requires insurance coverage of architects and engineers need to be covered in accordance with the Engineers Act, those who operate in both areas must be able to satisfy the requirement by a single insurance coverage that must meet the requirements of both associations. This is not something you can deal with under the legislation. I am simply putting it on the table here as a major concern of our organization.

Mr. Chairman, I thank you for your attention. I am proud that this act will continue the history and the story of consulting engineers making a major contribution to the building and economic wellbeing of this province, and I assure you that you will have our wholehearted co-operation in maintaining that standard in years to come. Thank you.

Mr. Chairman: Thank you, Mr. Weihs. Any questions?

Mr. Renwick: Just for general information, in the introductory part about your organization--again I speak out of ignorance--you emphasize the Canadian-owned nature of the business. Is the consulting engineering business in Ontario all Canadian owned?

Mr. Weihs: There is a foreign-owned sector and our organization, both the provincial organization, the Consulting Engineers of Ontario, and the national organization, the Association of Consulting Engineers of Canada, has confined its membership to Canadian-owned companies.

Mr. Renwick: What percentage of the overall business would the Canadian-owned sector have?

Mr. Weihs: I do not know. We cannot answer that.

Mr. Goodings: The majority is unknown foreign activities.

Mr. Renwick: Perhaps I could ask the minister how a foreign-owned consulting engineering firm becomes authorized to do business in Ontario.

Mr. Fram: The provisions are there for a temporary licence and that is usually the form in which those enterprises engage in activities in Ontario.

Mr. Weihs: I might add that foreign-owned corporations are Canadian corporations in the sense that they are incorporated within Canada.

Mr. Renwick: I understand that.

Mr. Weihs: Their ownership is simply not Canadian.

Mr. Renwick: How does that operate? I can understand that if a foreign firm came in here for a particular project, it would have a limited licence for whatever it was. What are the criteria on which a certificate of authorization is issued for a wholly owned subsidiary of a foreign operation or an organization doing business here otherwise than by a subsidiary corporation?

Mr. Fram: Engineering is unique among the professions in Ontario in that anyone can be the owner of an engineering corporation. Indeed, Renwick Engineering Inc. could commence doing business. The business aspect is separated from the professional services aspect. If a corporation like that were formed and it had a professional engineer licensed in Ontario doing its engineering work, there would be no difference between it and a totally Canadian-owned corporation.

Mr. Renwick: My question again comes out of ignorance. Could a foreign organization incorporate a company in the province to carry on the practice of professional engineering, get a certificate of authorization and not have any professional engineers on the staff who are qualified in Ontario?

Mr. Weihs: No, that is not possible.

Mr. Fram: Not at all.

Mr. Renwick: How is that protected?

Mr. Fram: There is a section that says all the engineering has to be done under the supervision of a professional engineer who is a licensed member of the association.

Mr. Renwick: The method by which those services are provided does matter?

Mr. Fram: Exactly.

Mr. Renwick: It has to be a person who is licensed in Ontario.

Mr. Fram: Right.

Mr. Fram: That is section 17, Mr. Renwick.

Mr. Renwick: Thank you.

Mr. Chairman: Have you anything further, Mr. Renwick?

Mr. Renwick: I would like to ask the Attorney General what he meant when he said he would be improving section 36. What did you have in mind about the way you would improve section 36?

Hon. Mr. McMurtry: Mr. Fram has done some tentative drafting. We are only--

Mr. Renwick: I just want to be picky about the direction of your thinking.

10:50 a.m.

Mr. Fram: The first and major concern expressed by the Insurance Bureau of Canada and by the Consulting Engineers of Ontario is the documentation presented to the insurer by the insured. The relationship between them, particularly within the engineering community, is one of contracts that require them, not only at the first instance they know something has gone wrong but also, if something goes wrong that may be their fault, to inform their insurer of that fact.

One of the revisions will be that the information cannot be obtained because it would be counterproductive. If the insured started hedging his statements to his insurer, it would delay settlement of claim and it would be particularly deleterious.

The other aspect is concern about nonprofessional reports by the consulting engineers and reports by people who are not competent to do the reports, even though those would be practically useless in a disciplinary proceeding and therefore would not be required.

In particular, the Association of Professional Engineers of Ontario is zealous to obtain information from professional engineers doing a report to the insurer because by the time they get around to examining or investigating the project, the whole damage and matter may be fixed up. That is why it especially wants the professional reports of professional engineers that are obtained by the insurer, so it can examine those and decide whether any further action should be taken.

Basically I understand, although Mr. Weihs would rather not have anything, they can live with that kind of restriction.

Mr. Renwick: Thank you.

My last question is on section 34. I am surprised that you are not more concerned about this section--not about the need for some kind of investigative arm for the registrar, but about the extent of the powers granted to the registrar, since this provision is entirely new and will likely find its way into other professional organizations.

Mr. Fram: I think it is already there.

Mr. Renwick: Is it in the Law Society Act?

Mr. Fram: Something similar, and in the Health Disciplines Act.

Mr. Weihs: We were extremely concerned about it, Mr. Renwick, but in particular we were concerned when it was presented to us in its original form. It has been substantially improved by the addition of the words "where justified suspicion exists." We recognize the element of danger here, but on weighing all the pros and cons, although we are concerned, we are prepared to accept it as a necessary measure to ensure that the quality of engineering is maintained and that, where necessary, action will be taken against those who do not conform to the standards.

Mr. Renwick: Then you are content to leave the decision to one person, the registrar, that he will be the one to make the assessment about reasonable and probable grounds?

Mr. Weihs: While an individual is named in legislation, I am satisfied that kind of action would be initiated only when more than one person--in other words, a committee--has looked at the situation and when our peers feel it is appropriate that action be taken. I do not believe the registrar would assume that power by himself without consultation with others.

Mr. T. P. Reid: You do not know who you might wind up with.

Mr. Weihs: Exactly.

Mr. T. P. Reid: Right now you do not have to worry, obviously.

Mr. Weihs: That is quite right. We have mentioned that possibility, but it becomes a question of formulating legislative definitions. I am concerned, and I am a member of the APEO, and I will try to play my role, as will my colleagues here, to ensure that this provision of the act will be administered fairly, justly and with caution.

Mr. Renwick: That is what we like to think about every act.

Mr. Weihs: I know.

Mr. Renwick: This may sound very legalistic, but an element of prejudgement is involved in this section, which I raised last night. It says the registrar, who has reasonable and

probable grounds to believe that a member has committed an act of professional misconduct, will appoint somebody to ascertain whether that act has occurred. Then the investigation is completed.

If the investigator says that act has occurred, the person against whom the allegation is made has been prejudged because it then goes to the discipline committee, presumably. The discipline committee has a report from an investigator appointed by the senior executive officer of the association, and that investigator, in accordance with the statute, has made a determination that a professional misconduct occurred. The member of the association is then in the position of having to prove that the act did not occur. That inconsistency leads me to believe the draftsmanship is faulty.

I think you would be very upset to appear before a discipline committee to be told that the registrar had appointed an investigator and the investigator had found that you had committed an act of professional misconduct. What do you have to say about it, Mr. Wiehs? I do not think that is the way in which the disciplinary procedure should be carried on, if I am correct in my view of it.

Mr. Weihs: I would rather not comment in detail on the discipline procedures because, quite frankly, I am only familiar with it in its theoretical aspect, the way it is framed.

I would love to agree with you, Mr. Renwick, in many respects, but I also believe that the Legislature has endowed the profession with privileges. Having received these privileges, I accept, and I know my colleagues accept, the special discipline that may have to be imposed on us.

This is why the term "probable grounds of suspicion" is so important. What I am afraid of is that a registrar and committees other than those that we have now might want to go on fishing trips. That is the trouble with section 36; it is a fishing expedition section.

Mr. Renwick: Section 36 may be fishing--

Mr. Weihs: I did not answer the question that Mr. Fram addressed to me about whether I could live with the revised act. Of course I could live with the revision, because it is not as disastrous as the last one; but it is not really good enough. It is an old thing, but if you threaten somebody with hanging and then just give him life, of course he is very grateful. I am grateful for the revisions proposed by Mr. Fram. I am not going to be hung; I am just going to be condemned to life imprisonment.

Mr. T. P. Reid: When we complain to the Attorney General, he does this all the time to us in the Legislature.

Mr. Weihs: My experience has not been that way, Mr. Reid.

11 a.m.

Mr. Renwick: I think there has to be some buffer to

protect members of society between the decision of the registrar and the appointment. I do not know what that buffer should be. One possibility would be that the registrar, if he believes he has reasonable and probable grounds to want to exercise this power, should be required to go before a provincial judge, someone who is skilled and knowledgeable in the question of determining whether there are reasonable and probable grounds before he can proceed to appoint the investigator who is to carry out the investigation.

The result of a finding of professional misconduct touches upon the very life of the individual member. We all know that in collective organizations it is very easy to get down on somebody, for rumours to spread and prejudgement to take place. Also, I think the clause has then to be modified to show that the purpose is to carry out the investigation, and not to come to a conclusion adverse to the person. The results of the investigation will then be available to the discipline committee if discipline is necessary.

I have those two major concerns, particularly when the person making the investigation is to have the powers of a commission under the Public Inquiries Act.

Hon. Mr. McMurtry: Could I just ask a question for clarification? Do you then object to the law society being able to make spot audits of lawyers? I cannot think of a more significant power than the law society being able to make spot audits of any law firm at any time. Nothing is more personal to most lawyers than their books. It has been long decided that in the public interest representatives of the law society should have that authority. It should be able without any warning whatsoever to go into your office or my office where we are practising law and make a spot audit. I thought this was being supported by our profession as something that was clearly in the public interest.

Mr. Renwick: You have asked me a question and I would like to answer. I have absolutely no objection to spot audits of the books of members of the legal profession. What I do object to is a substantial introduction into this bill without adequate protection to the members of the society about the action of the registrar believing on reasonable and probable grounds. With great respect to the present registrar, with his experience and so on, I do not believe that self-initiating power can be left to the registrar of the association.

The two points are quite different, in my judgement. A spot audit of a lawyer's books--

Hon. Mr. McMurtry: That is really a fishing expedition. But in this case, the registrar has to have reasonable and probable grounds.

Mr. Breithaupt: We are not dealing with trust funds, but just the usual financial background that would require the spot audit.

Mr. T. P. Reid: There are not enough of them.

Mr. Breithaupt: Here you are dealing with a variety of drawings that are being prepared or may have been inadequately dealt with. I have no quarrel with the spot audit of the law society and its ability to move in at any moment because dollars are reasonably mobile. I think it is a different kind of circumstance here, although if you are giving powers of self-regulation to a profession then one of the adjuncts to it is the responsibility to have--

Hon. Mr. McMurtry: Nobody will have the mechanism to--

Mr. Breithaupt: Whether it is ever used or not; I see the difficulties.

Mr. Renwick: I have no problem with the mechanism. My problem is that the mechanism is poorly prepared. There has to be some protection to the individual member. I get no satisfaction from Mr. Weihs telling me, "The registrar will consult with a number of other people." Just in the act of consulting, you raise and spread the question. It would not matter whom the registrar consulted with; he would not ultimately be protected in carrying it out unless he had reasonable and probable grounds.

I think some buffer--a provincial judge would be an adequate one--is called for. That is not going to gut the investigation. I would think the registrar would want to be in a position where he could go to a judge and say: "I believe this, and these are the grounds on which I believe it. I want to exercise my power to appoint an investigator to carry out a further investigation with a view to disciplinary action if warranted under the act." I do not think it is an either/or situation.

Hon. Mr. McMurtry: No. This is a very important issue and I appreciate that. But it should be pointed out, if my understanding of the legislation is correct, that the individual engineer or architect can simply say: "You cannot come into my premises. Get the hell out." Under those circumstances, you would then have to go to the provincial judge.

Mr. T. P. Reid: In section 25, the complaints committee, what kind of protection does that provide an individual under these circumstances? Does it provide any? Before you answer, the act provides--I do not remember at which point--that if you obstruct then you are liable to certain other sanctions from the committee. It is sort of like the breathalyser; you can refuse to take it, but you are charged with refusing to take it.

Hon. Mr. McMurtry: Yes. In effect, I would think there would then be some sort of hearing perhaps, if the registrar did not go the further step of obtaining an order from a provincial court judge, in which the individual member could state to the committee, "As far as I was concerned they did not have any reasonable and probable grounds to enter my premises and therefore I have not obstructed." There would be a forum where that issue could be determined.

Mr. T. P. Reid: Mr. Fram, does that come under section 25, the complaints committee?

Mr. Fram: The complaints committee, while related to the whole issue, is a screening mechanism. As you can appreciate, complaints are of various kinds. Somebody who gets a bill that is--

Mr. T. P. Reid: All I want to know is that there would not be any protection for the individual to go to the complaints committee and complain about the matters raised by the member for Riverdale (Mr. Renwick). It is a separate situation.

Mr. Renwick: May I just respond? I do not think a member of the society should be placed in the position of having to obstruct an investigator, appointed in good faith, before he could get to a provincial judge to decide whether it was right, particularly when subsection 41(4) says, "Any person who obstructs a person appointed to make an investigation under section 34 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000."

Interjections.

Hon. Mr. McMurtry: To establish the penalty, I would think you would have to establish that there were reasonable and probable grounds.

Mr. Renwick: Sir, you do not want members of the society placed in a position where they have to obstruct an investigator.

Mr. Breithaupt: To get the hearing to which they should be entitled.

Mr. Renwick: Yes, to get the hearing to decide the question. I think the proposition is a reasonable one and I would ask that you look at it, sir.

Mr. Weihs: I am impressed, Mr. Chairman, with the arguments being put forward by Mr. Renwick. It may well be that it would be advisable to provide something safe. The history and the past activity of the Association of Professional Engineers of Ontario do not lead me to believe that powers would be abused.

Mr. Breithaupt: However, you have to remember that we will not see this bill again for 10 or 20 years. We are going to have to live with it.

Mr. Weihs: Precisely.

Hon. Mr. McMurtry: Why would the Legislature be precluded from dealing with the legislation if there was any overreaching of any of the associations?

Mr. Breithaupt: Indeed, we would not accept it. Surely in professional legislation it is not likely that this major bill will come before us for some time.

Hon. Mr. McMurtry: I would think if there were any significant problems we would hear very quickly. I would hope so.

Mr. Breithaupt: I would hope we would.

Mr. Weihs: I am sure you would.

Mr. Breithaupt: We have not had any problem so far.

Mr. Chairman: Mr. Weihs, Mr. Goodings, Mr. Reid, Mr. Douglas, thank you for being with us this morning. We certainly enjoyed your presentation.

11:10 a.m.

Mr. Chairman: The second witness this morning will be D. Russell Brohm, professional engineer. It is exhibit 29.

D. RUSSELL BROHM

Mr. Brohm: Mr. Chairman and honourable members, this presentation is made with the concurrence and support of the Pentecostal Assemblies of Canada, a national religious movement having 800 affiliated churches in Canada, of which approximately 300 are in Ontario. Religious congregations have had a strong impact upon the development of Ontario in the past. If time permitted, we could review the likely future impact of groups of religious worship on the quality of life in Ontario. However, we think it is sufficient to say that religious congregations will continue to have a strong social impact throughout the province.

This brief is presented because of a very serious concern that Bills 122 and 123, probably without any such intention, impose an additional burden upon small religious congregations and there are some elements that should be looked at. The characteristics of a small religious congregation today in Ontario, whether it is a beginning congregation in an urban setting or an ongoing congregation in a rural setting, could be summed up as follows.

First of all, according to my own estimates, there are approximately 3,700 such congregations throughout the province. For the majority of these congregations, there is no central funding. They are totally dependent upon member-giving. I realize some religious movements do fund their local branches, but for the majority, in our understanding, there is no central funding. Since they are totally dependent upon member-giving to support them, I define them as generally underfunded. I can draw on 30 years' experience with a variety of small congregations to support that. They have become virtually totally dependent upon volunteer services, particularly with respect to the repair, alteration and construction of a sanctuary building.

I would also like to point out that in my estimate this touches a very large constituency. In those 3,700-odd congregations, we expect there would be 300,000 families composed of something like 700,000 persons who are members in adherence and worship in local small congregations. Due to this factor of underfunding I have referred to, the congregation, in our estimate, would find the obligation to hire both an architect and an engineer a burden. That requirement is outlined in paragraph 11(4)3 of Bill 122. "An architect and a professional engineer together shall prepare or provide the design for the construction,

enlargement or alteration of a building used or intended for, (i) assembly occupancy."

In our understanding, to hire both these technical people could propose a substantially difficult burden. If we approach it from a practical standpoint, the small congregation typically will provide most of the labour for alterations or new construction from among its own members. If they are assiduous in their looking, they can anticipate finding a person who is willing to donate his time--he could be an architect or he could be an engineer--so that their designs could be prepared at the cost of the cash costs, as opposed to substantial fees. It might be a reasonable expectation to find one technical person to prepare these designs as needed, but to expect two is being a bit unrealistic.

Perhaps I would not be out of order if I draw on my own experience. We were replacing a front porch or a foyer, whatever you would like to call it, in the city of North York with one of the same size but with a slight change in shape. North York, quite properly under current legislation, particularly the Building Code Act, required the design for that porch to bear the certification of either an architect or an engineer. They were proper in doing so because the Building Code Act binds them to do that.

But if we translate that to a small existing church out in a rural area where a small element of the building is so badly in need of repair it has to be replaced, they would need a building permit to do that and they would be hard pressed in terms of money to hire both an architect and an engineer for that small job. I would speculate the porch could be replaced for perhaps \$1,000, and the architect's and engineer's fees might come to three times that. I believe there is room for serious consideration of exemption of a small building for the purposes of religious worship.

Throughout both acts, there is the definition of a building size of 600 square metres, between small and big. We propose this be extended by a minor modification to the legislation such that a building under 600 square metres in building area could be constructed upon the certificate of an architect or an engineer, we have quoted the reference in our written submission, and that it be restricted to buildings for purposes of religious worship.

I would further submit that the building, design and safety requirements as required by the laws of Ontario are less complex for the small building of that size. Generally, it is a one-storey building. Once we get into more than one storey, we are into another use or a larger building beyond the realm I have mentioned.

Items such as fire exits, emergency lighting and fire alarm systems are much less complex than they are for high-rise buildings where the additional experts are needed.

It is my submission that special consideration be given to such a change in the legislation. I understand a comment has been made in some discussions beyond the realm of this committee that perhaps the municipality could relieve its requirements when such

a building is proposed. I submit they are not in a position to do this. The Ontario Building Code Act is a provincial statute. It is in lock-step with these two bills and it is binding upon the municipality. The municipality must enforce the legislation.

That concludes my presentation on that topic. I would be glad to endeavour to answer questions.

Mr. Breithaupt: I have some questions. I appreciate Mr. Brohm's presentation. I acknowledge that with respect to building programs funds for a small congregation have to be raised locally, although in a number of denominations perhaps a share of the pastor's salary on a mission basis or whatever is often taken care of as a congregation grows.

11:20 a.m.

It is difficult, though, for me to see why an exemption should be made for a religious organization because of the size of the building any more so than for a small township hall, a legion branch or a rotary club that is putting up a building in a local area where there is the requirement from a safety point of view to ensure that access and egress from the building in case of fire or other concerns can be prompt, thorough and efficient. The exit sign or whatever is required every bit as much in a small building used for religious worship as it would be in a small legion branch.

It is clear also that many of these buildings are quite actively used, with a variety of meetings on different evenings within the week. It is not as though we are dealing with a building that is used, shall we say, just on Sunday morning when it is daylight, where there is not as much traffic about and any problem that might arise could be more easily dealt with.

What concerns me, and what I would appreciate your opinion on, is why should there be a particular exemption just because a building is used for a religious purpose? Second, how can you ensure that the safety requirements which should be generally available in any public location, as the Ontario Building Code now requires, will be adequately met if the exemption is granted?

Mr. Brohm: I have not proposed that the requirements under the building code be shortened up or abrogated in any sense. However, based upon quite a number of years of experience, I am saying merely that these requirements in the case of the small religious organization can be adequately met by the provision of one technical person, that is, the architect, as opposed to requiring both.

That is the only amendment I have proposed and I fully recognize, having had a fair bit of exposure to the code, that specific requirements must be met, but in the case of a small building these requirements are substantially less complex than in a high-rise building.

You ask why we should do this for a religious body. Our position is that religious organizations have made outstanding contributions to the quality of family and social life, that they

still do so and will do so in the future, and that historically, church activities have been acknowledged by the province as having a preferred situation.

With respect to some of those organizations, I understand from your question that they do not necessarily have a high level of what I would call commercial funding, but most assembly buildings do, with the exception of churches and those of certain philosophic activities, such as the rotary club and so on.

I would submit this is a reasonable proposal. It affects only the smallest buildings. I believe most of the uses you mentioned in your question would be in the other category anyway. They would be building a larger building, beyond the 6,000 square metres. That is a relatively small building. It has seating for something like 300 to 400 maximum.

Mr. Breithaupt: You said 6,000 square metres and of course you meant 600. I can see the requirement and the principle involved that there could be certain powers with respect to smaller buildings. I cannot accept the fact that because it is for a religious purpose, that alone should be reason for an exception.

I have had enough involvement, over equally 30 years in a variety of Lutheran congregations in this province, to realize the importance of them is certainly there, but I could not accept an exemption solely for that reason. The idea of the exemption for a smaller building, whoever proposes it, is something I find a reasonable approach.

Mr. Gillies: I have to say to Mr. Brohm that I have a lot of sympathy with the problems that can be experienced, especially financially, by small congregations.

The point I would like to pursue from your brief is the last part. I am not an engineer, and I do not pretend to know a lot about engineering principles, but you made the comment that the architectural and engineering requirements are less complex and less demanding for buildings that are not used as much as others. I wonder if you can elaborate on that. Is that recognized in the building code?

Mr. Brohm: In the building code, the complexity of the exiting patterns is related to the population within the building. If you have a three-storey assembly building or public building, exiting patterns have to be developed from the upper floor to the second floor to the lower floor and out through the main door.

The same goes for the other safety features, particularly emergency lighting and fire alarm systems. There would be a need to provide a zoning mechanism in the fire alarm system to set out just where the fire is occurring. The building would be organized in compartments, so there would be an identification system as to where the difficulty is.

With a building of 600 square metres or less for purposes of religious worship, it would be highly uncommon for them to be more than one storey, even for the uses Mr. Breithaupt mentioned.

Therefore, basically just the main floor has to be looked after, plus some consideration of whatever population would be found in the basement, to get a proper exit pattern. Those three or four items I mentioned would all be much less complex.

I guess the core of my presentation was that these needs have been met quite successfully by one professional person in the past for 25 years. I am sure we will enjoy equally good services in the future.

Mr. Gillies: I guess one of my concerns would be that I could take you to a hall in my riding of Brantford which is probably the busiest large banquet hall in our city. It is a large church hall attached to a small church. It is a great source of revenue for the congregation. It is a very busy place. I do not know whether both an architect and an engineer were used on that project; I would have to check. But it is a building that is used hard and it is used often.

Mr. Brohm: We have already looked after that, in that if it is a hall attached to the church, in gross the building would be substantially above the limit of our proposal. The 600-square-metre limit will only seat 300 or 400 people, somewhere in that area.

Mr. MacQuarrie: That is on one floor.

Mr. Brohm: Yes.

Mr. MacQuarrie: A lot of church buildings, community halls and the rest of it, have a basement and one floor.

Mr. Mitchell: You are talking usable floor space.

Mr. Brohm: Generally, the area of 600 square metres would take in a basement plus one storey, a main floor. Generally, the basement is not counted unless we get into gross floor area. However, in your case it probably would substantially exceed the limits I have proposed.

Mr. Gillies: I guess my question to the Attorney General would be whether he feels the public interest could be accommodated with such an amendment. I would be most interested to hear his view at this stage of the game, anyway.

Hon. Mr. McMurtry: I think it might be more relevant, if the committee were willing at this time, to hear the view of somebody representing the Ontario Association of Architects.

I share most of the concerns expressed by Mr. Breithaupt, that while one has to be very sympathetic to the problems faced by religious denominations that do not have major resources, we are still dealing with buildings where there is a very significant issue of public safety because of the number of people in those buildings. Again, there are many other charitable organizations that are faced with similar challenges.

It might be helpful at this time if somebody representing the architects' association would like to comment on this from a professional standpoint.

Mr. Chairman: That would be agreeable. Have we any volunteers? Please come to the table.

11:30 a.m.

Mr. Rayman: Mr. Chairman, I am Irv Rayman. I am the past chairman of the Ontario Association of Architects and chairman of the OAA's act task force.

Building churches has been very troublesome to our association for quite some time. A church is one type of building that contravenes the Ontario Building Code and is brought to our attention more than any other.

In a recent experience in southwestern Ontario--I believe it was Brantford--a group describing itself as church designers, even though it is really a drafting company, designed a banquet hall to seat several hundred people and to be attached to a church. The relatively unsophisticated building department gave them a permit almost on demand.

As the building inspector saw the hall being built, he noticed many problem areas with respect to the strength and safety of the roof, the bearing capacity of the floor, the exiting requirements and the lack of sprinklers. He recognized these things while the building was under construction.

The association was able to help him by having a local architect inspect the drawings and the construction. This architect found over 40 abuses of the building code, and every one of them involved public safety. The building department and the building code branch of the Ministry of Consumer and Corporate Affairs were quite surprised and upset, which actually led to a request that there be a tightening up in these areas.

We definitely feel that both professionals are required to design assembly occupancy buildings, especially since public safety is involved. A poorly designed building of 600 square metres could pose a major safety risk to 300 people inside it. The professional engineers are generally not equipped to deal with the exiting requirements in assembly occupancy buildings and, similarly, the architects are not equipped to deal with the very complex structural, mechanical and electrical requirements in this type of building.

Generally, there are longer spans, greater requirements for ventilation and greater requirements for electrical supplies in that often there will be a little stage or some type of stage lighting. All of these things must be addressed in both small and large buildings.

We have great sympathy for the front porch problem, but we still believe that even in a front porch situation, an architect should be involved. There are very stringent requirements for stair sizes, for the handrails, for the size of the door, for the way the door swings, for the exit light requirements and so on that very much involve public safety.

I assure you, sir, we are not trying to create work for architects, and we are very sympathetic to the need to keep fees down. All we can say is that the OAA would certainly be sympathetic in a situation in which it was difficult to locate an architect for a \$100 fee. We would certainly make our services available in locating such a person who would perhaps volunteer his time or do the work for a very nominal cost.

Mr. Chairman: Mr. Gillies, have you concluded?

Mr. Gillies: No. I thank the representative from the OAA. It confirms some concerns I had, and I am quite aware of the case you mentioned in my area.

I guess that completes my questioning for now, Mr. Chairman.

Mr. MacQuarrie: I certainly have some sympathy for the case put forward by Mr. Brohm. I noticed through the acts that we are dealing with 600 square metres of gross area and you, in your proposed amendment, are dealing with 600 square metres of building area, which is roughly 5,700 square feet. That is not a bad size of building in some respects.

I can certainly see the dilemma and sympathize with it. There are a number of small organizations--some of them are listed here, such as legion halls, church groups and other community groups--that do not require large facilities or, for that matter, elaborate facilities, but they have to comply with the building code and the safety requirements.

I do not know if 600 square metres of building area is the right figure to look at, or what is. At some stage in planning a building there should be a size certainly at which an engineer or an architect, one or the other in terms of these smaller places of assembly, could handle the total work.

I can see the difficulty in a blanket requirement, regardless of size, regardless of the nature of the addition or the alteration that might be taking place, of the services of two professions. That casts quite a load on some of these bodies.

Here again I have a problem. First of all, I look through the act and I see 600 square metres of gross area; that could be two storeys, a basement and one floor. We are not talking about a tremendously large building. I cannot see why an engineer could not move in there and do the design for a building like that quite satisfactorily. When we talk about 600 square metres of building area, I begin to think we are pushing up there pretty good. Is there a happy medium somewhere?

Mr. Brohm: I would be willing to alter my proposal to 600 metres of gross area.

Mr. MacQuarrie: Mr. Chairman, I think the minister should look at this in consultation with the two bodies involved.

Mr. Chairman: Thank you, Mr. MacQuarrie. Minister, have you any comments?

Hon. Mr. McMurtry: No. I agree with Mr. MacQuarrie's suggestion. We will consult with the two bodies.

Mr. Chairman: Thank you, Mr. Brohm, for being here this morning and letting the committee know of your concerns.

Mr. Brohm: May I be permitted to add one sentence?

Mr. Chairman: Certainly.

Mr. Brohm: I have been involved for about 25 years in making my services available to my religious order on the basis of \$1 a year. It is possible some of the honourable members here have officiated at dedication of facilities where I have been involved in rendering some services. That has been on a demand basis. I am not in the business of going out and advertising my availability or anything like that. It is the form of community service I tend to follow.

When the joint practice board that considers applications for recognition is functional, I hope that in looking at my situation, such factors as continuity of service, competence and satisfaction of the owner will be strong factors of consideration as to the form of recognition I will have in the future as compared to what I have enjoyed in the past under existing legislation.

11:40 a.m.

The discomfiting point that has come to my attention is that I have heard rumours that existing committees and future committees may look at revenue generated. If I placed my services at the use of my religious order, obviously that has not generated any revenue. Generally, I have generated revenue in their direction, towards them, by donation. I would hope that would not be a significant factor in considering future recognition for the purpose of the work.

T. N. YOUSSEF

Mr. Chairman: The next witness is Mr. T. N. Youssef. It is exhibit 4. Welcome again, Mr. Youssef.

Mr. Youssef: Mr. Chairman, my comments today are on section 47 of the bill, relating to limitation of action.

For the past 15 years, limitation of action was provided for in the Professional Engineers Act. I believe it was in 1968 or 1969 that it was written into the act for the first time, and it remained unchanged until it reappeared in Bill 123, in a much improved form, I have to say. All the ambiguities that existed before appear to have been removed. Even the language has improved greatly and the section has been simplified. Those who wrote it deserve to be commended, I think.

However, there is still further room for improvement in the particular section. The first area for improvement is the extension to the limitation period, which should not be

open-ended. Basically, there is a 12-month or one-year limit to bring an action for services relating to the practice of professional engineering, and there is provision for extending that period. That is all very good, except the extension goes on for an indefinite period of time.

Generally speaking, a six-year limitation applies to most actions that arise out of services provided for a variety of people. There is no reason that services in connection with the practice of professional engineering should have an open-ended limitation period. As the section is written, it seems it can be extended indefinitely.

Prior to 1968, when that section did not exist, the limitation action took effect and after six years such an action was statute-barred. The section was introduced and imposes a one-year limitation period with an unlimited extension. I submit that the open-ended provision in that section should be eliminated. It should be written so that the maximum period of time in which such an action can be brought is six years, like all other actions.

There is always a desire for finality. Earlier, we heard concerns about the cost of professional insurance and liability insurance. This touches on that question. There has to be a limit to how long a professional engineer should carry liability insurance for services he has rendered in the past.

Perhaps another minor problem with the existing bill is that it contains provision for an extension of the limitation period before that period has expired. I have to admit that the necessity for such a provision escapes me. Its wisdom is not apparent.

If someone is of the view that he needs to bring an action against a professional engineer and the 12-month limitation period has not expired, he has the choice to actually bring that action and then proceed with it slowly. There seems to be nothing in the statute to encourage him to go to court for an extension of an unexpired limitation period. That seems to be something that perhaps should be removed or eliminated.

As far as I know, if there is a reason to proceed slowly with an action, that could meet someone's need to commence the action on time and then proceed slowly, if that is meaningful. But to go to court and say, "Although the period has not expired, I would like it extended," seems to defeat the purpose of having a statute.

My last point is that the bill contains a criterion for extending the period. I submit that an additional criterion should be added. A delay in bringing that action or proceeding in time should be explained for better clarity and to eliminate the case where someone who has no explanation at all for not commencing whatever proceeding he wished to commence in time comes to court for an extension of time. The object is to encourage diligence and to eliminate stale claims that increase the probability of an injustice being done to someone. I have given in my brief a possible wording of this section of the act that meets what I said earlier.

Hon. Mr. McMurtry: For your information, I might remind the committee that basically what we are doing in this legislation is retaining the present limitation period pending the passage of the new Limitations Act, which was introduced just before Christmas, Mr. Youssef. You will have another occasion to share your wisdom with us, because undoubtedly that Limitations Act will go to this committee at some future date before it is passed.

That is not to say we are not prepared to consider your interesting submission to see whether it would be in the public interest to make any changes pending the passage of the Limitations Act, which will override any other legislation. The proposal in the Limitations Act is somewhat different from this. I think, quite frankly, we will be hearing from both the architects and the engineers in relation to the act when it is before a standing committee, most likely this committee, a few months down the road.

Mr. Youssef: But the Professional Engineers Act, being a specific act, usually takes precedence over a general act like the Limitations Act.

Hon. Mr. McMurtry: We propose to change that. There are so many limitation periods scattered around provincial legislation, we think it would be in the public interest to have all limitation periods in one piece of legislation or in the schedule to that legislation. Then members of the public and even lawyers, who I am sure will be interested in this proposal, need only look at one statute to find out whether a specific limitation period applies.

Mr. Youssef: Has this new Limitations Act been tabled?

Hon. Mr. McMurtry: Yes, it has been tabled. We will be happy to send you a copy of that act, Mr. Youssef. I think we have your address.

Mr. Youssef: Thank you.

Mr. MacQuarrie: I have one question, Mr. Youssef. I wonder, in the practice of engineering, where services were incompetently provided and the results of the incompetence do not come to light until several years down the road, what sort of obligation the engineer should have in those circumstances. The idea of five years in your proposal--

Mr. Youssef: This section does not deal with the moral or ethical obligations the engineer will always have, regardless of any limitation period. The limitation period deals only with bringing a lawsuit against that engineer.

Mr. MacQuarrie: For damages.

Mr. Youssef: Right.

Mr. T. P. Reid: If it happened five years from today, then you have a year from February 1, 1989.

Mr. MacQuarrie: No. The blanket limitation here is that you cannot bring an action after 12 months from the date on which the service was performed or ought to have been performed.

Mr. T. P. Reid: I am sorry; you are right.

Mr. MacQuarrie: Then they have elasticity in terms of the limitation period. I wonder what is wrong with having that elasticity in there in view of the prospect, particularly with respect to engineering services, of some claims arising some time in the indefinite future.

Mr. Youssef: It is just a question of fairness. If that section did not exist and we had only the present Limitations Act, then after six years the action would be barred by statute.

Mr. MacQuarrie: Yes.

Mr. Youssef: We have shortened that limitation period for professional engineers to one year with the possibility of indefinite extension.

Mr. MacQuarrie: Right. What is wrong with the indefinite extension? That is the only thing I am asking.

Mr. Youssef: In that case, I can answer only with another question. What is wrong with an indefinite extension for any action arising out of any professional service, whether it be the services of a lawyer, doctor, plumber or anyone else for that matter? The only answer I know of is that if the action is brought so late in time it would be difficult to do justice to the party. Witnesses forget, evidence disappears and it becomes difficult. We would like people to be diligent.

Mr. MacQuarrie: For engineering incompetence, the evidence is strong and firm.

Mr. Youssef: It is also doubtful that a misdesign or a bad design by a professional engineer would not show up for many years. It would likely be bad workmanship or bad material that would have such a latent effect.

Mr. MacQuarrie: I have known of situations where bad work, inadequate design, poor design and the rest of it has not shown up for three years until you have a group of consulting engineers in to review the facility and they come up with all kinds of evidence of incompetence.

Mr. Youssef: Actually, that begs the question of why this section is needed in that case.

Mr. MacQuarrie: I felt that some elasticity in this regard was appropriate.

Mr. Youssef: I agree with you. It should be appropriate, but it should have an upper limit.

Mr. MacQuarrie: You say five years and I say--

Mr. Youssef: It should be six, because there is one year already.

Hon. Mr. McMurtry: Your address is 100 Lawnside Drive?

Mr. Youssef: Yes.

Mr. Fram: We will send you a copy of the draft act.

The Vice-Chairman: Mr. Youssef, thank you very much for appearing before the committee. We appreciated receiving your written brief.

Members of the committee, I was checking to see if there were any of the next series of witnesses who might be in the audience this morning so we could complete our normal time, but it appears there is no one else I can slot in here at the moment.

Hon. Mr. McMurtry: Peter Kirkby is here.

The Vice-Chairman: I think the brief is relatively large. I have had the clerk checking. Dr. Peter Kirkby, is yours a lengthy brief?

Dr. Kirkby: Would you like to do it now? It may go on for a long time.

The Vice-Chairman: That is what I was thinking. We had best not alter the order, I would think. We have scheduled people in proper times. Is Mr. Armel here? The Institute of Store Planners; is there anyone here? Is Patrick Maguire here?

I just give you an example of the size of the brief. In fact, there are two briefs to be introduced by Dr. Kirkby. I would be altering the schedule completely if we were to begin at this time. I suggest the committee recess now until our normal sitting time of two o'clock.

The committee recessed at 11:54 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT

BILL 123, PROFESSIONAL ENGINEERS ACT

WEDNESDAY, FEBRUARY 1, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part: McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

Witnesses:

Cagney, A. C., Executive Director, Association of Professional
Engineers of Ontario
Kirkby, Dr. P.
Maguire, P., Patrick Maguire and Associates Ltd.

From the Association of Canadian Industrial Designers of Ontario:

Arato, P., President
Armel, M., Counsel; with Atlin, Goldenberg

From the Institute of Store Planners:

Fairbrass, A., Member; President, D. I. Retail Planning
and Design Ltd.
Robinson, D. K., Counsel; with Beard, Winter, Gordon

From the Ontario Association of Architects:

Brunner, P. J., Counsel
Rayman, I., Past President; Chairman, OAA's Act Task Force

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 1, 1984

The committee resumed at 2 p.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT
(continued)

Resuming consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

Mr. Chairman: Gentlemen, I see a quorum. We will continue with our fourth witness of the day, Patrick Maguire and Associates Ltd. Mr. Maguire, would you please come to the table?

Mr. Maguire: Right here, Mr. Chairman?

Mr. Chairman: I believe you have an oral presentation, sir.

Mr. Maguire: That is right.

Mr. Chairman: Please proceed.

PATRICK MAGUIRE AND ASSOCIATES LTD.

Mr. Maguire: My presentation, Mr. Chairman and members of the committee, is not lengthy. It really pertains to one particular item of each act, which refers basically to the grandfathering clause.

They are clause 52(5)(a) of the Architects Act, Bill 122, and--

Mr. Mitchell: Excuse me, Mr. Chairman, may I just interrupt for a moment? Mr. Fram, this morning we had a discussion on the grandfathering clause. The minister made some comments about that particular clause, I believe.

Mr. Fram: He accepted a suggestion that where the council of one of the organizations refuses to go along with the recommendation of the Joint Practice Board, they should give reasons, in writing, for not going along with that.

Mr. Mitchell: I raise that, sir, so you will be aware that some discussion took place.

Mr. Chairman: Carry on, sir.

Mr. Maguire: Also, subsection 48(2) of the Professional Engineers Act, Bill 123.

You will recall that when the Honourable Roy McMurtry introduced the two bills in the House on November 17, he placed much emphasis on the Joint Practice Board, which is related in the two acts. He stated, "The Joint Practice Board will receive applications from architects who have been practising professional engineering and from professional engineers who have been practising architecture." He said that where appropriate, they will be allowed to do so, but the board will make recommendations to the council under a grandfathering clause.

Naturally, I was enthused by this particular statement of the minister because it affected me. Therefore, I managed to get a copy of the two acts--after much difficulty, gentlemen--and found that basically the sections relate to the fact of what the registrar or the Joint Practice Board may do. My emphasis is on "may" and not "shall."

The whole spectrum of the grandfathering clause is really based on the joint agreement between the Association of Professional Engineers of Ontario and the Ontario Association of Architects, for the proposed mandate is within that joint agreement and is not in the acts.

No doubt, when a lawyer looks at a piece of legislation he looks at all the angles and what could go wrong with it. My question here today is, what happens if the two associations disagree and scuttle their own joint agreement?

I have practised for over 30 years in Windsor, Ontario, and I am not exactly impressed with the track record of the two associations. It could possibly happen, because the mandate is not legislated. As I mentioned before, the section in both acts relates to the creation of the board which may make recommendations, so there is no legislative mandate, except in the joint agreement.

Also, the joint agreement states that those who may be eligible for grandfathering should apply within one year of the constitution of the Joint Practice Board. Another question arises here: what happens to those who apply within the year? Will they be subject to the act when it is enforced or is there going to be some allowance for a transition period while the person applies for that licence?

Suppose the engineer is practising architecture and the architect is practising engineering. They apply for their licences and continue to practice what they have done for over 10 or 20 years. Basically, by law, they are subject to the act right there and the guillotine comes at that particular point. I do not know how the two associations are going to take that into account because there is no interpretation of exactly what is happening there.

As you know, gentlemen, in most acts and laws of the country, there is always a transition period. You recognized this transition period when you stated in the joint agreement that the Joint Practice Board would serve for at least two years. I think it should be expanded to allow for a transition period.

Recently the Ontario Building Code was updated. It stated that after a certain date this shall apply; the same goes for the Nursing Homes Act. Since there are livelihoods at stake, your committee, Mr. Chairman, should take a serious view of this. Incidentally, that transition period should be a legal transition period.

I also did a little research into the Public Accountancy Act, which passed in 1970. I am pretty sure your members are well aware of that one. In there the grandfather clause is more explicit. It states that the powers which they refer to--not a Joint Practice Board in those days; they throw it to the public accountants council. They state that they may waive the conditions if you have had so many years of experience.

What it all boils down to, gentlemen, is that I have been practising for 20 years and have been a member of the association for 30 years. I think I only have five years to go at my age; I may go on to 70, I do not know. The point is that I hope my livelihood, which, Mr. Chairman, rests in the wisdom of you and your members, will not be cut off due to a lack of an actual, specific, legislative mandate. That is all, Mr. Chairman. I leave it with you.

Mr. Chairman: Thank you, Mr. Maguire. Mr. Fram?

Mr. Fram: Before we start, I would like to correct a few impressions about the Joint Practice Board provision. First, the Joint Practice Board as initially conceived was to be in existence for a specific time. This act requires the Ontario Association of Architects and the Association of Professional Engineers of Ontario to appoint and reappoint forever, for the act speaks forever, representatives to the Joint Practice Board.

2:10 p.m.

This is a permanent feature of the relationship between architects and engineers. Their function is and will be to deal with all these disputes between architects and engineers in the building field, whenever they arise. The provision says they shall appoint and each of the organizations is under a duty to appoint. The Joint Practice Board must exist.

The second feature that should be noted is that the act does not say they shall recommend. Initially, when the agreement was entered into, it was thought a short transition period should be there. There is no provision now for expiring the mandate to consider that issue, which is essentially a jurisdictional issue.

If a dispute arises about jurisdiction, there is no provision whereby they are required not to consider any more an application by an engineer who has done architecture during a specific period. The statute is what will govern the joint practice board.

Those were two impressions about the legislation I wanted to correct.

Mr. Maguire: Thank you, sir, but you have already proved then that the joint agreement is not correct, the one I have.

Mr. Fram: I beg your pardon.

Mr. Maguire: You have already proved to me the joint agreement of which I have a copy from my own association is not correct.

Mr. Fram: Do you have copies of the bills?

Mr. Maguire: Yes.

Mr. Fram: The joint agreement is still an agreement. The statute is what will govern the creation of the statutory body, the Joint Practice Board.

Mr. Maguire: My point is that the copy of the joint agreement says it shall be for at least two years, but you say it is going to go on forever. So the one I have is not correct.

Mr. Fram: It is different. That agreement is correct but the statute is different.

Mr. Maguire: It seems to me, and many of my fellows have asked me to express their thoughts too, to be wide open when the Joint Practice Board may do this and it may do that, if you compare it with the Public Accountancy Act.

Mr. Fram: You have quite a different situation. We are now talking about 50,000 persons whom we have heard are members of the Association of Professional Engineers of Ontario. Of those, we can talk about perhaps 50 or 100 who have engaged in what we could consider to be architecture under this bill.

Mr. Maguire: That is right.

Mr. Fram: There is no way you can provide that all 50,000 members of the engineers' association are grandfathered--

Mr. Maguire: I agree with that completely. Basically they would not have the qualifications expected for that. There are many engineers who are not in private practice, and most of them who are in private practice are in heavy work, sewers, bridges and things like that. There are some--I reckon about 3,000 of them, not 50 or 100--in that same boat who are doing architecture.

The point I want to emphasize, if I cannot get the other points across, is that transition period. What happens then? Can you tell me? I am here to learn.

Mr. Fram: There is no cutoff period when the Joint Practice Board will no longer consider the situation either of an architect who, prior to the coming into force of this act, has done engineering and wants to become a professional engineer or of an engineer who has done architecture and wants to become a licensed architect.

Mr. Maguire: You are telling me there is no cutoff period.

Mr. Fram: There is no cutoff period.

Mr. Maguire: Are you enforcing the act, sir?

Mr. Fram: I hope these will be acts of the Legislature. If the act is not complied with, if those things do not happen, since the Attorney General administers the statute, those are matters that must be brought to his attention.

Mr. Maguire: May I convey that message back to my compatriots in Windsor?

Mr. Fram: Certainly.

Mr. Maguire: It was a very important part and I hope you can appreciate my point.

Mr. Fram: I certainly do. Your occupation is totally in issue and I certainly appreciate your point.

Mr. Maguire: Basically, I have no other disagreement with the act. I think it is an update. It was on a point of clarification that I attended today. I thank the chairman and the committee members for their indulgence in my unprepared speech.

Mr. Chairman: Mr. Maguire, before you leave, I should ask if there are any questions by the members.

Mr. T. P. Reid: The problem has been solved.

INSTITUTE OF STORE PLANNERS

Mr. Chairman: The fifth group will be the Institute of Store Planners: Donald K. Robinson, QC, Alan S. Fairbrass and Ross Caister, would you come to the table, please?

It is nice to see you here, Mr. Robinson. You seem to have arrived just on time.

Mr. Robinson: Mr. Chairman, that is the story of my life.

Mr. Chairman: Would you please introduce your colleague? You may proceed whenever you are ready.

Mr. Robinson: Mr. Chairman, my colleague is a designer-planner. His name is Alan S. Fairbrass, F-a-i-r-b-r-a-s-s. He is the president of D. I. Retail Planning and Design Ltd. here in Toronto. They have offices in New York and London. He will be assisting me in responding to any of the questions your distinguished committee may have of us.

May I proceed?

Mr. Chairman: Yes, you may.

Mr. Robinson: Good afternoon to you all. I thank the chairman and the committee for allowing us this opportunity to make some submissions. You have our brief before you and it is not my intention to read the thing through. I just want to highlight it, because we are of the view that it basically speaks for itself. We have raised certain concerns in that document which we would ask your committee to address.

Once I have completed, Mr. Fairbrass and myself would be happy to answer any questions the committee may have of us on any concerns that are raised in the document.

I have a couple of preliminary comments. I do not think the concerns raised in our brief should by and large be news to any of the members of the committee. They have been examined by the House. Initially, though, Dr. Leal's report, when he was Deputy Attorney General, with respect to professional committees is known to your membership. We have cited on a couple of occasions in our brief certain of the statements made in the professional organizations report.

2:20 p.m.

Our first concern is that some of those recommendations or references in that professional organizations report are not really reflected in Bill 122, especially if you want to get to specifics, those with reference to dealing with the term "prime planner." I know there are some difficulties with that, but it seems that is a matter this committee must deal with.

The second thing I would like to point out by way of a preliminary comment is my personal puzzlement after reading Dr. Leal's report and the Hansard reporting of the debates on second reading in the House with respect to this bill on or about November 29 of last year.

Concerns were raised by the members at that time, in particular that only architects and, of course, engineers were consulted with respect to the input. They may very well have a strong lobby, but the question that concerned me when I was consulted about this matter by our clients is why were other parties who may have their method of earning a living affected not consulted at that time, too? To my knowledge, they were not.

This problem was known. It was around and it was highlighted by Dr. Leal's committee report. As such, I submit that denying my clients, designers and planners, that type of representation is not the democratic way to go about solving these matters.

Having made those two initial comments with respect to the historical nature of the development and framing of this committee, and eventually the passage into law of the revised Architects Act, I draw page 1 to the attention of your members. In the reference, while we are talking primarily about Bill 122, there is a direct impact relating to Bill 123, the Professional Engineers Act.

Some of those matters have to be addressed if the committee,

in its wisdom, is of the opinion some adjustment should be made to the Architects Act after it has heard our representations and those of some of our other colleagues.

The other point I make, as I have indicated in the introduction, is that our brief does not go into detail. I think we are basically highlighting our concerns and giving some thrust in the direction of the brief as a guideline to the members. The other rationale for not going into detail is that we are of the view or have heard or have information to the effect that other similar organizations and associations related to design planning will be making submissions before this committee, or perhaps already have.

The last comment with respect to page 1 of the brief is the definition we have framed. It is indicative of a fairly wide scope. The rationale for that is not overtly to categorize specialities. If we get into a specific type of speciality such as store designers, furniture designers and the like, the legislators may find themselves in a bigger box later on.

I have favoured the term "prime consultant," despite the difficulties that have been pointed out in Dr. Leal's report, and as we have quoted herein on the last page.

Looking at page 2 and the excerpt from Leal's report, I point out two items. I think this is crucial: freedom by the client to make a choice of his designer-planner or his prime consultant, however you wish to address it. This is presently restricted in Bill 122 and that is one of our major concerns. I think it is not only in the client's interest, but I think it is in the interest of the taxpayers and generally for the public good. That is the reason you are here today.

The bottom part of that page goes on to detail the history of how this speciality field or profession developed. As I think you are well aware, the last time the Architects Act was amended was in the mid-1930s. I am not certain of the date but it was somewhere around 1935. It has not been brought up to date to the present time. There may have been minor amendments to it, but we are looking at a time frame of some 49 to 50 years.

Through this time frame, and specifically since the 1950s, these groups of people under, call it what you like, a grandfather clause or educated in other jurisdictions, starting filling this type of vacuum, developing a particular speciality of design in areas which possibly architects did not bother with. It is not to say they could not have done it, but they did not. In other words, this group of people developed and filled this vacuum.

We have that time frame, a perceived public need, an industry being developed and, as we are all aware and I need not go into detail, because of the tremendous technological development, the tremendous sales push and the tremendous communication advances we have made, television specifically, there has been a need to merchandise, a need to get out there and put attractive dimensions, aesthetics or environmental structures in place. This need has been filled by this group of people. They

have evolved, changed and filled the vacuum fairly rapidly, and they have done so since 1950.

This is big business. I suppose that is the point I want to impress upon you. It is a large industry. Consequently, I caution you when you regulate it--and you are going to regulate it--to do so with some sensitivity, with some type of intuition and, hopefully, with some business acumen in order that you act properly and look after the needs of the specific people I am representing here today.

The latter part of that page details education. We have basically framed in this brief an overview with respect to educational requirements. I suppose the point I put to you is this professional group is not amateur.

I know there is some concern that anyone can go out and call himself a designer-planner, as it were. This profession, this art, is now taught at schools of higher learning or, as I termed it earlier, grandfathered. They are governed by bylaws, constitutions or codes which have been framed and put in place, both nationally and internationally, by the various associations of which they are members. There is a certain level of professional standard.

The schools that teach this in the jurisdiction are recognized and supported by the government. In turn, they have helped and assisted in this growth industry.

2:30 p.m.

The three levels of education I speak of are the university level, which of course is where architects are primarily trained; the special institute which is now degree granting, and that is Ryerson Polytechnical Institute, which is internationally recognized; and certain of the government-endorsed and sponsored community colleges. I think there is a course, although not a degree-granting course, at Carleton University in Ottawa.

I say no more with respect to the educational aspect of this matter because that has been detailed, or we understand it has been detailed, in a brief that is going to be put to you or has been put to you by the Ryerson Polytechnical Institute people.

On page 4 I detail representative groups that are also in this field as designer-planners. As I said, these groups and associations have their regulations and standards. It gives you some indication of the vast constituency of this industry that has been developed since the 1950s.

We talk about social change. This is included here, and I do not wish to be repetitive, to show that, with the change of society and the development of the design groups, they have come to respond to the public need. Consequently, in responding through this time frame they have developed a speciality.

From a reciprocal point of view, we also emphasize it is the client who has come to the designer, the designer-planner or the prime consultant, as you wish to term it, because it appears

historically from the client's perspective that this individual has been able to fulfil the client's needs. He does not necessarily need to go to an architect or an engineer for whatever needs he needs fulfilled.

Obviously there is a relationship, as I have indicated on page 5, between the architect and the engineers. This group that fills this vacuum, the designer-planner, has grown up with the development of designing and engineering. They have been able to interface with each other and in representation of the client to the public good for merchandising, marketing or whatever.

This section is put in here generally to outline the areas each has become identified with. Obviously, architects and engineers have special and particular responsibilities because of their training--structural soundness, safety, comfort features, service comforts, engineering, plumbing, air conditioning and the like. That is recognized. We are not necessarily seeking to carve out or infringe upon that area but, by the same token, we do not wish to be taken out of our design field by the architects, which is precisely what this proposed legislation is doing.

We indicate on page 6 the nature of the services designers and planners provide. It is put in there so you have some appreciation of just what the services are and what is currently being performed. It gives you some understanding of the scope of the consulting work that is now going on and which we hope will continue basically unimpeded.

We have the same responsibilities as the architect-engineer. The designer-planner has and can obtain liability insurance. He has obtained and can obtain errors and omissions insurance and, of course, like the architect or engineer he must adhere to the building codes or building standards.

The effect of the proposed legislation is, in our opinion, possibly too all-encompassing. We want and we seek by this brief consideration by this committee of the designer-planner or the prime consultant, however you wish to term it.

There is another consideration. We fear there will possibly be an escalation of cost to the client and the general public if that is not done, because you have, or you may have, a layering effect of costs. We tentatively identify section 11 which deals with the exceptions as the principal area where we would suggest amendment be made.

In summation then, from this particular effect on a designer-planner, we think regulatory controls are a bit too harsh; they may very well result in the demise or possible shrinking of the designer-planner industry as we see it now and consequently you can well appreciate the economic impact.

As we have indicated on page 8 under our objectives, basically we would like an amendment that would allow us to carry on. Let us complete the type and nature of work we are primarily doing. Allow us to act as prime consultants. Do not fetter us with the requirement to go around seeking the blessing, as it were, of

these other professionals, architects or engineers. Allow us to engage them as subconsultants or as prime consultants, especially if we go out and get the work and especially as we have carried on this work with very little public criticism over the last 30 years or so.

We want to retain the latitude of our operation. We want to be able to carry our own plans forward within the building code standards and, of course, supervise those plans as they go forward and are fulfilled.

As I indicated initially, we were concerned at not being consulted when this bill was in its earlier stages. As we also indicated, we have seen no great outcry by the public and hence no specific need for the type of regulatory control which we perceive is reflected in the proposed legislation.

I do not think it is appropriate, nor do my clients, that one profession should control the other, especially as they have worked well together and have complimented each other over a term of approximately 30 years .

We endorse the Leal commission's comments, and we understand the concerns that are raised there with respect to defining what a prime consultant is. However, I think it must be met and we should be allowed some relative freedom to operate as we have over approximately the past 30 years.

That is a fairly quick summation of our brief. My colleague Mr. Fairbrass and I welcome any questions that you may or any members of the committee may have.

Mr. Chairman: Thank you, Mr. Robinson. I believe you have a question, Mr. Gillies.

Mr. Gillies: Mr. Robinson, there are several concerns I would like to raise with you. One is in terms of, if not past commitment, certainly past indications of direction you have received, which you allude to in your brief, both from statements by Dr. Leal and in quoting from the Professional Organizations Committee.

You said you were not consulted, or at least clients of yours in this particular area of design work were not given the opportunity to have input on the bill. I wonder if you could enlarge on that.

I may be wrong, but I had received no indication thus far that the consultation process in terms of drafting this legislation was restricted solely to architects and engineers but, rather, that there had been a fairly broad discussion and a large number of delegations and that these were taken into account in coming up with what we have.

Mr. Fairbrass: May I address that?

Mr. Gillies: Please do.

2:40 p.m.

Mr. Fairbrass: I think we found out as a group that this act was--when we started reading it, we were not directly consulted. It is the spinoff effect that this act has on our profession, and that is where we picked it up from. Perhaps there was considered to be no reason to consult us, because it was an act for the architects in concert with engineers. We--that is, our group--did not have that opportunity to make a necessary brief on what was counselled on the issue, if that helps you in any way.

Mr. Gillies: It does and I thank you. Perhaps I should direct this to the Attorney General (Mr. McMurtry). My understanding was that, in the four or five years that led up to the tabling of this legislation, there was a fairly broad consultative process. I can appreciate not everybody is happy now, but I at least thought everybody had been given an opportunity to comment.

Hon. Mr. McMurtry: I think as to anybody who was possibly going to be affected by the legislation, yes; it is our position, and I will ask Mr. Fram in a few minutes to expand on this, that this legislation does not in any way change the status quo for the interior designers.

As I say, Mr. Fram will address this difficulty. You might say we have a significant disagreement with some of the legal interpretations that have been offered. The intention of the legislation is to maintain the status quo for interior designers because of their important services. It is a very important industry in this province. We would not want to do anything to restrict what they are currently doing.

As an example of the difficulty I have with some of the interpretations that have been offered here, the legislation states quite clearly that certain sections are to deal only with architects and engineers vis-à-vis their relationship with one another. That legislation could not be clearer, in my respectful regard.

It is in that context that we speak of both architects and engineers to be acting as prime consultants. It is not in any way to restrict the activity being currently carried on by this group of very talented people. We are only concerned to protect the public interest as it affects, for example, public health and safety, and the structural quality of buildings. We do not think interior designers wish to get involved in this. I am told the exemption contained in this legislation for the work carried on by this group of people is similar, if not identical, to the exemption that is currently in the law.

I have some concern as to why this group of people feels threatened by this legislation, because it is not our intention to restrict what they are currently doing within the law as it currently stands. Perhaps it would be helpful if Mr. Fram, either now or later after others have had an opportunity to ask questions, were to address more specifically some of the issues that have been raised.

I just want to set out the parameters of the policy. If there were no specific consultation with this group--and I cannot say whether that did or did not take place--it would not surprise me if there were not too much in the way of consultation, if any, because it was not the intention of the drafters of this legislation to change the status quo as far as the interior design profession is concerned.

Mr. Gillies: I appreciate your comments. Perhaps in responding, I might ask Mr. Fram to comment on the fact that in this brief at least--tell me if I am reading it wrong, Mr. Robinson--I do not see any indication that the people you are representing restrict themselves to interior design. I see several references in here to both interior and exterior design. What I see in your references to prime consultancy on some projects is that you are working in some areas that would go considerably beyond what I consider interior design work.

Mr. Robinson: That is quite correct. We are not just interior decorators or interior designers.

If I may add, in response to the Attorney General, what you say with respect to the interfacing of architects and engineers is quite so; we are not here to have the whole thing amended. I am certainly heartened by what you say but, as I indicated and as the brief has stated, we are looking primarily at clarification in the exceptions so there is no doubt about it; so these people can go on and continue as they have, obviously keeping in mind the public need and the safety of the public, which is of course your responsibility.

Mr. Breithaupt: In the circumstance, we seem to have two themes at this point. One is the matter of consultation. I think the Attorney General has explained the circumstance where, in the view of the ministry, this group was not challenged by the legislation and therefore it is understandable that it may not have been particularly involved.

I think it would be useful, though, for Mr. Fram more particularly to set out the concerns on page 7 with respect to this association's views of how it believes the various items that are referred to in section 11 will affect its members' ongoing abilities. If it is correct that each of these concerns is not worthy of their raising it with us because it has been attended to, then now is the time to set that out clearly. Then we will see whether it would be at all useful to reinforce that by having the exemption circumstance or whether indeed it would even be necessary to do so.

Mr. Fram: First, I would address the issue that comes forth. In terms of the technical areas, we can be best advised by the Ontario Association of Architects. But in terms of prime consultants, a prime consultant is anyone. The question is whether you or I can offer someone who wants something built to do everything to get it built. There is nothing in law or anywhere else that prevents anyone from being a prime consultant, approaching an owner and saying, "I will arrange to have provided

all the professional services you require." There is nothing in this bill that affects the legal right of anyone to do that contract.

Mr. Fairbrass was in to see me on Friday, and one of the concerns is that architects will not act as consultants to someone other than an engineer. I asked the OAA about that issue, and you may want to ask them the same question. They have said to me that there is nothing in the way their profession is conducted that would prevent them from acting as subconsultants and there will be nothing in their code of professional ethics or in their professional misconduct to prevent an architect from acting as a consultant to someone else, whether that person is an engineer, an owner or a builder, in terms of providing professional services.

2:50 p.m.

So on the prime consultancy, there is really nothing in there. I was very reluctant. We put it into section 8, the section dealing with the relationship between architects and engineers, because that is in both acts and it governs the relationship between the two professions, which have been vying for prime consultancy in certain areas. Since that sets out all the rules of the relationship between those two professions--and we have talked about who can provide a design, who can prepare a design, for one issue or another--that issue was left open.

Although it does not have any legal meaning, it was thought when they were going to a client saying which services would be provided by an engineer and which by an architect, they would have that document, which said: "Here is our relationship. Here is the fact that neither one profession nor the other of the two I dealt with, and the rules between them, has priority in being prime consultants." That was the only reason.

It has no legal effect in there either. I was very reluctant to put it in. In fact, it is just another area of concern that has been expressed by both consulting engineers and architects over time. But there is nothing in law to prevent anyone from being a prime consultant, whether that person is an interior designer, an industrial designer or anyone else. That is the first thing.

The three other issues are better explained. In fact, this act, as we talk about the technical aspects, governs the issues between architects and engineers. There will be some mirroring, no doubt, of those provisions in whatever amendments there are in the building code. This act does not deal with the building code. I think they are better prepared to talk about the relationship between the building code and the issues that are raised here.

Mr. Fairbrass: May I respond, Mr. Chairman? I would like to correct a misunderstanding. As far as I recall, Mr. Fram, it was never part of our discussion that architects would not consult with us or become subconsultants or joint consultants. That has never been stated. If that is the impression left, it is one I wish to deny emphatically.

Mr. Fram: Indeed, it may have been by one of the other people at the--

Mr. Fairbrass: It was not stated by us, because we do work in concert with architects and engineers.

Maybe it would help the committee if I were to explain very briefly how we function. Without going into a lot of laborious explanation, in principle we take a brief from a client and prepare the necessary drawings and design for that. We have traditionally consulted with engineers, because they are the ones to this point--this is where the Professional Engineers Act overlaps--who have been able to satisfy the code requirements as far as structural ability is concerned.

The building code interpretation is such that anyone in this room, if he cares to sit down and study it carefully, can prepare the necessary documentation to submit for a building permit. If I may just go on with that for one short moment, the policing of that building permit has to be done at the local municipal level, and it has to be done by the people on the staff of whatever municipality we are dealing with. They have to understand the act and they have to be able to question or examine the drawings with that act in mind. Anybody who is competent to read the building code can prepare those documents.

We have always worked with engineers of all the various facilities--mechanical, structural, electrical, etc.--to get the necessary approvals and the stamping for structural safety on our drawings. That is where the Professional Engineers Act is now saying they cannot encroach on certain aspects of architecture. That prohibits us from operating. The prerogative to design, I respectfully submit, is not solely the prerogative of architects.

I personally have an architectural background. I studied architecture in England and had some success at it. There are a lot of people in our profession who have gained their experience in that form. They have come up through the architectural profession. They are not necessarily qualified architects but have enjoyed the marketplace of the business, the entrepreneurial spirit perhaps, and have developed into successful businesses such as our own. We have 30 people. We have a New York office and a London office, and our largest office is in Toronto. We have developed in this field and we have been able to operate very successfully and obtain building permits on behalf of our clients by the use of engineers. This act is prohibitive in that sense, as we understand the act as it is written, unless the necessary amendment is made.

That is how we go about our daily task. We have been able successfully to go into the marketplace for large, major clients, and we have representations from the retailing industry to support these statements. This is where we are concerned, that we cannot continue on that basis because we would now have to employ an architect in concert with ourselves.

The act says 600 metres, and 600 metres in a gross area sense would be as if you took, shall we say it is a 300-metre

addition to a 5,000-metre area, and you knocked the wall down between them. Suddenly we cannot work in that space any more because it is now in excess of what the act says, if you understand that simple principle.

There is nothing we do that does not affect safety. We read the building code as part of our daily routine of business. We have to have the units for escape. We have to be cognizant of all the fire barriers, and all the rules and regulations that prevail to enable us to get a building permit. I can carry on for two hours on that. In principle, that is how we work.

Mr. Gillies: What I am hearing is the Attorney General feels the new act will not in any significant fashion alter the status quo for your people. Am I right in thinking that as long as you can get some further assurances, perhaps some more concrete assurances that this will be the case, you will be quite happy with the new act?

Mr. Fairbrass: Absolutely. We will be very happy. In fact, it is suggested we meet with the architects and the engineers, in committee perhaps, and make a recommendation as to how this act could be modified to everybody's success.

Architects have been very free to enter our profession at any time they wish. I do say it is a profession; I earn my living by it. By definition, perhaps it does not exist. There are architects who do our work and they do it very successfully, but they are a minority rather than a majority. We have filled that role in the past and we are happy to have them along. We are interested in quality of design and quality of interior environment. That is part of what we do. That is summarized in our brief.

We want to solve this. We want to carry on as we have been working. We want to be successful and profitable at it. We would also be happy to have the architects in concert with us, as we frequently do. We are used and retained as consultants by architectural firms because of our specialty but if we are forced--when a client comes to us with a 200,000-square-foot department store, which exceeds everything that is written in this code, we cannot do it without retaining an architect to get a stamp because he cannot just stamp the drawings.

In the past, I must admit there have been architects who will stamp the drawings. They do examine them. They should examine them only from the point of view of whether they meet the code if that is a requirement, but we are just as capable of reading the code.

Mr. Gillies: Perhaps if the ministry can undertake to confirm the Attorney General's feelings about this matter, that may be another problem solved for us.

Mr. Breithaupt: I do not want to weigh down the committee with even more meetings, but it would perhaps be useful and would mutually satisfy the members of the committee if the proposal of a three-party meeting, with Mr. Fram along as well,

could resolve this circumstance. There might be some amendment that could at least be considered.

Hon. Mr. McMurtry: That may well be so. I was going to make the suggestion or ask you, for those of us who are not overly knowledgeable as to the details of these matters, to give us an illustration of the type of design job you could do under the existing law that you say you will be precluded from doing if this legislation is passed in its present form. As we did earlier, we might ask a representative of the Association of Ontario Architects to comment on that as a preliminary step. It is whatever will be most helpful to the committee.

3 p.m.

Mr. Breithaupt: That was part of the question I raised as to the four points set out on page 7. The matter of the prime consultant fee was spoken to by Mr. Fram quite satisfactorily, that any person, be he or she a developer, lawyer, agent or whatever, can fit under that general term of prime consultant and therefore the designer-planner is not precluded.

But on the matters of constriction as to what can be accomplished in the view of this delegation, perhaps Mr. Fram could speak to those. Those are three things about which this delegation feels circumscribed by the legislation, from its point of view.

Mr. MacQuarrie: If I may add a footnote to that, the question was raised yesterday, at which time a delegation was dealing with Bill 123, the Professional Engineers Act. At that time, Mr. Fram indicated the discussion was more appropriate to the Architects Act; this dealt with plans for alterations to an existing building by industrial designers.

At that time, if I recall the discussion correctly, Mr. Fram, you indicated it was more appropriate to be dealt with when we considered the Architects Act. There seemed to be some question in your mind then; there certainly was in mine, I know.

Mr. Fram: The difficulty I have in answering these questions, and which the OAA would not have, is that all three involve the building code and not directly this legislation. That is why I think the OAA could better provide us with an answer to these three questions.

Mr. Breithaupt: Perhaps we could have that now. It might resolve the concern.

Mr. Chairman: That sounds reasonable. Any volunteers?

Mr. T. P. Reid: While we are waiting for them to decide who will be the goat here, can I--

Mr. Renwick: Am I not on the list of speakers, Mr. Chairman?

Mr. Chairman: Yes, you are on the list, Mr. Renwick. I

know you are very patient. Mr. Reid, Mr. Renwick has been waiting very patiently. Would the witness please answer the question so we can get to Mr. Renwick?

Mr. Rayman: Thank you for inviting me to respond to this.

Mr. T. P. Reid: You might give your name for a grateful posterity.

Mr. Rayman: My name is Rayman. I appeared earlier today and left my credentials.

There is a many-faceted question before us. Regarding the first question, with respect to changes in the Architects Act, I would like to read you what the act that has been on the books has said over the past 30 years. It says that nothing would prevent any person or corporation from preparing "a sketch, drawing or specification for interior decoration or the installation in the interior of a structure of fixtures, nonload-bearing partitions or equipment where the structural alterations involved do not raise considerations of strength or safety."

The new act says that nothing will prevent nonprofessionals from "the preparation or provision of a design for interior decoration or for fixtures, nonload-bearing partitions or equipment for a building that will not affect or is not likely to affect the strength or safety of the building or the safety of persons in the building."

I submit that those definitions are as close to being identical as they could be.

Interjection: Where is that?

Mr. Rayman: It is on page 15; clause 11(3)(e).

As the Attorney General says, the status quo has been maintained to the extent that it can be.

With respect to the issue of public involvement in the preparation, I did a quick count, if you will allow me to digress. Close to 500 organizations and individuals, some of whom were interior designers, who made submissions to the Professional Organizations Committee are listed in the back of that committee's report. In fact, all of the changes we have proposed in our act have been run by the Interior Designers of Ontario.

We have information that all of those changes have been approved by the IDO, the organized and recognized body representing interior designers in Ontario. They have met with us in a three-way meeting between the Ontario Association of Architects and the ministry responsible for the building code, and the professional engineers attended that meeting as well. We made some modifications in satisfaction of their concerns and found agreement with them.

Just to indicate that this is not a two-way agreement between the engineers and the architects, there were over 40

meetings with varying groups, including the Urban Development Institute, the Housing and Urban Development Association of Canada, the Toronto Home Builders Association, the Consulting Engineers of Ontario, the Interior Designers of Ontario, the Ontario Building Officials Association and the building code branch. That is just to name a few; I cannot remember them all.

I would like to point out that although Mr. Fairbrass has indicated that he is trained as an architect and has many of the qualifications of an architect--

Mr. Fairbrass: I took architectural training. That may qualify that.

Mr. Rayman: In fact, most of the people who practise as interior designers do not have Mr. Fairbrass's qualifications, and most interior designers are not competent to consider many of the issues that are put before them in the building code.

I do not know whether you would like me to take your time by reading you very quickly a list of 40 of the items we picked out that architects are trained to handle in the day-to-day course of their work. Perhaps I will go into it a bit, and when you are bored you will stop me:

The separation of different occupancies within a building with walls of various fire separation ratings, depending on the nature of occupancies in the building;

The necessity for noncombustible construction under certain occupancies;

The need for maintaining a fire resistance rating for certain structural members or other parts of the building by protecting them with fire-resistant materials;

The design of fire walls and fire separations and the need to protect openings;

The need to use materials of acceptable flame spread rating for interior finishes in many situations;

The calculation of the occupant load;

The theoretical number of people who would be in the building, which affects the size and location of exits;

The need for sprinklers in buildings under many conditions and the requirement that the sprinklers be properly placed and that their spray coverage not be impeded;

The limitation on openings in the sides of buildings so as to prevent the spread of flames from one building to another, depending on the distance between them;

Special fire spread provisions that apply to covered vehicular or pedestrian passageways, malls, enclosed courts and underground walkways;

Fire alarm and fire detection systems;
 Firefighting connections and equipment;
 Emergency lighting and exit signs;
 Firefighters' voice communication systems;
 Access to exits and exit sizes;
 Efficient and safe exit layouts.

Is that enough? Julian indicates that he is bored with the list. It goes on for several pages.

Hon. Mr. McMurtry: I think we can continue to risk boring him.

Mr. Breithaupt: Read several more pages.

Mr. Rayman: Several more pages. Thank you.

For nonprofessionals to indicate that it is sufficient for their drawings to be checked by an architect or by building officials is really not correct. The building officials, particularly in rural areas, are unable to provide more than a cursory review of the drawings; indeed, often there is no review of the drawings at all, and the building permit is handed to the applicant immediately upon his application.

So, in many instances, even in the major urban centres, there is never the pretension that an exhaustive analysis of the drawings is done. The more incorrect they are, the more errors there are in satisfying the building code, the less likely it is that all of them will be caught.

Virtually every new mall and shopping centre requires that the work of interior design firms be reviewed by the architects and engineers who design the project. One might be tempted to say that this should be good enough, but in fact it is not. Our main objection stems from the fact that it is absolutely impossible to check every aspect of safety in a completed set of drawings, which is often almost black with notes and dimensions.

3:10 p.m.

When the drawings are prepared under the personal supervision and direction of an architect, they are reviewed and corrected all through the process of preparation, and mistakes are caught early and not compounded. It is a terrible and unfair responsibility that is placed upon the architect when he is asked to review completed drawings prepared by others. Inevitably compromises are made and errors are missed. The result is buildings that are less safe than they should be, and I would submit to you that this is not in the public interest.

The design of buildings is not a game for those unschooled in all of the areas of public safety. It is a deadly serious

business when public safety is involved, and it must be left only in professionals' hands. Those who have come before you to brag that they have been practising architecture illegally, perhaps for many years, with impunity, are certainly playing with fire, and it is the public who will be burned.

The Professional Organizations Committee, which looked at these questions long and hard, concluded that building design for those buildings that are covered in Bill 122 required professional design services in the public interest. Those who write and maintain the Ontario Building Code have fully agreed. The Interior Designers of Ontario have also agreed. We respectfully request that you help us to protect the people whom we all serve by maintaining the standard of safe professional design in buildings.

With respect to the four points that are put to you on page 7 of the brief, I should indicate that we received this brief only in the last five or 10 minutes and have had very little time to review it. We certainly concur with Mr. Fram that there is nothing in our act, in any other act, in any other regulations or in any regulations we intend to pass that would prevent the designers from acting as prime consultants and calling themselves such.

We do not intend to pass any regulations, nor is there anything in the act, that would prevent an architect and an interior designer from working together on a project, and we believe this is what should be done where matters of public safety are required. We know of no reason why the interior designer cannot be prime consultant, and the architect would work for the interior designer and help him on those matters of public safety for which he is required.

I am sure I should not be speaking for the engineers on point 3, but I would think it is almost always the case that engineers are required to do the mechanical, electrical and structural aspects and I cannot imagine how anyone would want to change that.

Is it true that a designer-planner will be able to obtain a building permit only for projects under 600 square metres? Other than in housing I believe that is true, but it is, of course, an indication that they will be able to achieve that only in buildings under 600 square metres where the nonprofessionals are involved. Professionals are involved and are available to them to be involved in all of those situations.

Mr. Chairman: Thank you, Mr. Rayman, for your clarification.

Mr. Brunner: Mr. Chairman, my name is P. J. Brunner. As counsel for the Ontario Association of Architects I would just like to address the central question that has been raised in this matter, which was put by the Attorney General, namely that we perceive nothing whatever in the present bill that in any way impinges on anyone who was operating within the law as it stood or as it now stands.

Indeed, under the Architects Act today the design of a

building the cost of which exceeds \$10,000 must be prepared and provided by an architect. An exemption is provided in connection with that--and Mr. Rayman has read it--which appears in clause 16(4)(g) of the present Architects Act in relation to "interior decorations or the installation in the interior of a structure of fixtures, nonbearing partitions or equipment where the structural alterations involved do not raise considerations of strength or safety."

In the present bill the substance and fact of that exemption has been continued--indeed, has been broadened, as Mr. Fram indicated, so there is nothing whatever that impinges on or in any way restricts or inhibits anyone who has been operating within the present law. Indeed, the exemption has been raised in the sense that now anyone can prepare a design for any building that has a business occupancy, personal services occupancy, mercantile occupancy, industrial occupancy or residential occupancy up to three storeys in height or 600 metres in gross area.

That is something that was never there before, because the matter was determined not by size but by the cost of the building, which was \$10,000, which, if translated today, in terms of cost, would be no more than about translated today in terms of cost, would be no more than about 200 square feet, if that.

So as far as the Ontario Association of Architects is concerned, we see nothing whatever--and this is the position we take on the present bill--that in any way, shape or manner infringes on what anyone has been doing, provided he has been operating within the law.

Mr. Breithaupt: Perhaps we could have a response to complete that, in case there is one, Mr. Chairman.

Mr. Chairman: All right. Is there?

Mr. Robinson: Mr. Chairman, Mr. Fairbrass may have something following the three points I wish to make.

Mr. Rayman emphasized, I believe, that we are interior designers. We are not interior designers; we are talking about designer-planners, and I think Mr. Gillies brought that up earlier. I wanted to make that clear.

With respect to qualifications and the fact that some building officials in rural areas are not qualified, this seems to me to be something that should not necessarily be before this committee; it has to do with the building codes and the training of people in the rural areas or in the municipalities that are responsible for enforcing the building code and standards.

The other point is that he read a segment of the act--I have forgotten what section it was--but he said it was identical to that of the original legislation back in the mid-1930s. The point we make in our submission is that society has changed. We have expanded upon that.

We want the exception framed or an exception put in there to

allow us if, as I believe the term was, "we were bragging that we practised architecture." My people are not doing that; with all due respect, we know our place. But we fill this vacuum created by the change in society, and we now want that aspect clarified in the exceptions, so we will not in the future be found to be operating outside this specific piece of legislation, as was enunciated by their counsel.

Mr. Fairbrass: May I say something here, gentlemen? We are not here representing the Interior Designers of Ontario. We are not saying that we are not in some respects in concert with them, but we are representing our group. IDO has its own submission, I understand, before you, and I think it should be addressed separately.

We know ourselves to be planners and designers. We are environmental designers, if you wish. We do address the interior and exterior aspects of building construction.

I beg to differ with counsel for the OAA, but the bill says under subclause 11(3)(a)(i), "that is not more than three storeys and not more than 600 square metres in gross area," and I would draw your attention to clause 11(6)(h) on page 20. It is quite explicit. It says, "'gross area' means the total area of all floors above grade"--by the way, gentlemen, we had a definition of "above grade" by a building inspector and it means "excluding basements or footings"; I do not know how you would do that, but anyway--"measured between the outside surfaces of exterior walls or, where no access or building service penetrates a firewall..."

As I mentioned to you earlier, in our design experience we are always involved in penetrating a firewall, but we have to make the necessary code adjustments to our design to accommodate those things. We go before the building commissioners frequently just to see how best to interpret it or just to get agreement that it is acceptable.

I think architects do the same thing; they have to use the building inspector as a sounding board. In fact, the issuing of a permit does not give you the right to build, because it is the final inspector who signs off the building and says, "I do not care what those turkeys downstairs said, I have to be responsible and I disagree." So you really come down to a personal interpretation of all these factors.

3:20 p.m.

But we in the past have been able to obtain building permits--not on large architectural things; and we are not trying to say to architects, "We want to do your job." We are just saying we want the right to plan the spaces, as we have traditionally done, and we have always worked with people in concert to achieve that end on behalf of our clients. This act does not allow that to happen, as we perceive it.

Mr. Fram: There are two aspects. One of the difficulties in coming to terms with industrial designers and interior designers is the vast number of very important services they do

provide, and I do not think anyone would deny that. It includes conceptual design. In conceptual design someone has a pizzazz item, whether it is the way McDonald's or some other restaurant or chain is going to market or draw attention to its product, and the concepts may come from, and often do come from, conceptual design firms.

There is nothing here with respect to conceptual design that is prohibited. The point at which the Architects Act plugs in is when the design is to govern construction--that is, when it is going to be used for building, when it is going to go before someone for approval for building.

The second aspect concerns interiors. Perhaps "decoration" is a terrible word today, and certainly we can do something to improve the idea of decoration. I think the building code officials are thinking of using the words "interior finishing" or some such phrase because "decoration" has the painter-wallpaperer-artisan connotation. But with respect to interior work, the idea of the clause is to say that interior designers--and we are talking about the interior--can do everything except those things that bear on safety, and in essence they can do all that work.

Where it comes to a matter of safety, and I think Mr. Fairbrass would agree, where it is a structural matter, where it is one of those safety matters, they want to go to a professional. The question is whether the professional should be invited to review and stamp someone else's drawings or whether he should do his own drawings.

Both professions, the Association of Professional Engineers of Ontario and the Ontario Association of Architects, have had a history of problems with stamping someone else's drawings because the next step in doing that, of course, is not doing the kind of examination that the building code is all about and the whole issue of the profession is about--that is, ensuring the safety of the public. This is why they are very concerned that with respect to safety-related items the professional engineer or the architect or both do those things.

This provision does not then allow the professional to say, "Okay, we are taking over the rest of the store fixtures, the kind of materials, the equipment you are going to have in here." It does not allow the professional to say, "Sorry, we have got our foot in the door on the safety item; we now have to design everything else." It says that those things dealing with the interior of a building can be designed by anyone, as long as those things do not affect safety, and where they do, it has to be designed by a professional.

Mr. Gillies: Mr. Fram, with respect, and I think we went through this about 15 or 20 minutes ago, it states in the presentation in several places that the people Mr. Robinson is representing do not only do interior work. Are we saying this is going to go on, the status quo will be maintained, but we are going to turn a blind eye to this situation, or are we going to address it?

Mr. Fram: If we are talking about cladding on buildings, if we are talking about designing buildings, we have a profession that has been licensed to provide building design. We are now talking about persons, some of whom, and Mr. Fairbrass may be an example, may be competent to design buildings larger than the size anyone can design under this bill. There are no requirements. Anyone can call himself an interior designer; anyone can call himself an industrial designer; I can do that.

Interjection: Or exterior.

Mr. Fram: Or an exterior designer, or a designer. Although there are many in the profession who are well trained and many who spent many years in schools at provincial expense, no professional group is being isolated here. We are talking about every man, and that includes me, and that terrifies me.

Mr. Fairbrass: Excuse me. I have to protest that. What we are saying here is that design is not an academic exercise; it is a factual thing we do on behalf of our clients and we are paid for it. Design is the bottom line of what appears in a building, structure or whatever you want to call it. It is something we do for a living, and our living is being threatened because the right to do what we have traditionally been doing is being taken away from us.

Hon. Mr. McMurtry: You seem to be coming at this two ways. I think you may be losing some of us, quite frankly. I am not really a member of this committee, but I would say that at one moment, as when you started with this very articulate submission, you were saying we were taking something away. Then I thought it was agreed that what we were doing was maintaining the status quo. Your counsel conceded that and said: "Yes, but the status quo is not good enough. What was legislated 30 years ago is not relevant today." This is why I am having a little difficulty.

One moment you are saying, as you have just said, this legislation is taking away some rights you have been enjoying. The next moment your counsel is saying, "Yes, it is the status quo, but this legislation, which is almost identical to what was legislated 30 years ago, is not good enough in the 1980s." As a lay person, I would like to know which it is. Are we taking something away you enjoy at present, or do you want to enjoy something in the future you do not legally enjoy now?

Mr. Gillies: The Attorney General has hit it on the head. I ran into a problem because I was with you all the way, and I thought we were coming to a consensus, then I heard two different definitions of the status quo, the one in the brief and the one articulated by Mr. Fram. I want to be sure we are talking about the same kind of design. Does it or does it not impact on the safety of the public? Is it or is it not being conducted within the aegis of the act? Those are my concerns.

Mr. MacQuarrie: I wonder, Mr. Chairman--

Mr. Renwick: Mr. Chairman, I am on the list.

Mr. MacQuarrie: I will certainly defer to Mr. Renwick, but I want--

Mr. Renwick: Which list am I on?

Mr. Chairman: I thought you might have forgotten the question, Mr. Renwick. We seem to be belabouring the point, but we will take a few more minutes. This is an important issue.

3:30 p.m.

Mr. MacQuarrie: I wonder if we could return to the scenario that was raised yesterday when this came up. That is, I am the owner of a large shell of a building with a variety of partitions in it. I call in an industrial designer or environmental engineer, call him what you will, and ask, "How can I best utilize this space?" He draws up a set of plans. From representations made to me, it is my understanding that where partitions are involved, the practice is to consult an engineer if they are to be moved. I understand under the new legislation they no longer can do this sort of thing.

Mr. Fram: If it is a load-bearing partition in a building that is an assembly occupancy, for example--

Mr. MacQuarrie: A store or office building.

Mr. Fram: Then it will depend on the relationship. It may involve some architecture, in which case an architect will be involved as well as an engineer.

Mr. MacQuarrie: By calling in the engineers, as they have done in the past, they were operating completely within the law as it existed. This was my understanding.

Mr. Fairbrass: At least as it was expressed.

Mr. MacQuarrie: Now, for that particular scenario, they are out of it. The owner has to employ the services of an architect.

Mr. Fram: No. He can employ the engineer or architect or a joint firm to do that work, the same work. They could not do that before, they could get an engineer to do it; now they can get a professional or professional services to do the same service.

Mr. Breithaupt: The fact is they were doing it and that was an acceptable business practice, as I understand it.

Mr. Fram: Yes.

Mr. Breithaupt: That seems to be the problem when you talk about changing it. It is a similar definition, even though what they were doing may now be excluded, and they would rather have what they were doing more particularly defined by exemption to allow it to continue. Is that not their concern?

Mr. Robinson: That is the nub of it, yes.

Mr. Fairbrass: Mr. Chairman, what we are saying is yes, of course, we can continue on that basis; but we have to employ an architect. Previously, we have employed an engineer. Under this legislation, we would have to employ an architect. Would our clients, would our fees, etc., be compatible in the marketplace? It is going to add an additional burden to us promoting for business. We go out in the marketplace and knock on a lot of doors. That is how we get our business.

Mr. MacQuarrie: If it is a large building, the architect has to employ an engineer.

Mr. Fairbrass: Under this act he is forced to employ an architect to administer those technical aspects of the safety codes that are written into the Building Code Act. That is really what we are saying. We would like an exemption--however, it may be somewhat limited--to allow us to continue on that basis, as we have done traditionally.

I am talking about structural safety, safety of the building now; I am not talking about fire escape routes and that sort of thing because we address those all the time as a daily routine in our business. Structurally, if we perceive that we want to knock down that wall and put a beam in, we go to an engineer and have it engineered and it is submitted and stamped as a part of our drawing set. The building department examines the drawings. It sees that any structural alterations that have been made are covered by that engineer.

I do not want to specify a building, I really do not. I do not want to specify a beam. That is not part of my job. We want the right to exist, as we have done, and essentially it has been in concert with the structural engineers of this province and, of course, also, the mechanical engineers with whom we have worked.

Mr. Chairman: I think the case has been articulated. I think the Attorney General and staff have an idea what you are looking for in the legislation, and that the committee members are now enlightened. Prior to us doing the clause-by-clause debate, we might have to give it some consideration.

Possibly we should move on before Mr. Renwick forgets his question. Mr. Renwick, you had a question.

Mr. Renwick: It is the same question. I think Mr. Brunner put the position of the problem to us and that we must assume that nobody in the design planner business which has been represented by Mr. Robinson has engaged in wilfully breaking the law. We have to make that assumption. We cannot have a useful discussion otherwise. But it seems obvious to me that unless we spell out in subsection 11(3) either an enlarged clause (e) or a new exception, we are not going to keep pace with the development that Mr. Fairbrass and Mr. Robinson have been putting in front of us.

The important point that came through to me was that they

would like to have a situation in which, if there was likely to be an effect on the strength or safety of the building or the safety of persons in the building, they would be extended the confidence, because of the status of their business, to use consulting engineers with respect to that work--that is my understanding of it--without having to use architects for it, despite the fact that substantially similar language is at present in the Architects Act. I am concerned about it because I cannot deal with the 600-square-metre question; those are numbers and the ultimate result is obviously arbitrary, and Mr. Fairbrass and Mr. Robinson have a different position.

A constituent of mine came to see me--she has an established business, which is successful and employs people--to discuss this problem with me because her sense is that her business will be in grave difficulty in the marketplace if she is placed in the position where she must have both a consulting engineer with respect to structural matters as a subsidiary part of the creative work they do and, added to that, the expensive cost of an architect. It is extremely difficult to walk into the marketplace, provide your creative act and then tell the person, "I have to hire two professionals to accomplish it."

Certainly the concern that was expressed to me was expressed with respect to the Architects Act; it was not expressed to me in terms of the Professional Engineers Act. So there is no concern in my mind because we have introduced into the Professional Engineers Act the question of safety of persons and property, which was not in the Professional Engineers Act, and by a strange coincidence we are leaving it in the Architects Act. So instead of relying on one profession we are asking them to rely on two, and I do not think that is a reasonable position because, if my constituent is correct, it will simply mean ultimately that they will have no place in the market they have built up over the years because people will say, "I cannot afford that."

My particular constituent was not as immediately or directly concerned with this square-footage question; she felt she could live with that and so on. But on this major question it seems to me the conundrum is that we have given, for the first time in words, responsibility for safety to the engineers, which was not there in words formerly, and the tag end part of the definition in the Architects Act as it now stands in the definition in here relates to "the strength or safety of the building or the safety of persons in the building."

My constituent, I think, was quite comfortable with the fact that they had an obligation, if they were going through firewalls or if they were engaged in using common services that went through bearing walls or other matters involved in that kind of question, to use consulting engineers. But by maintaining these words in the exception in the present act and the exception in the new Architects Act, we have doubled an item of cost for them, which will put them out of business. That is my understanding.

3:40 p.m.

My request, to solve the conundrum, is if the government has seen fit to use the words in the definition of the practice of engineering related to safety of persons and property, that we not leave it in the Architects Act. Instead, we should take it out and do whatever further updating of an exception to the act is necessary.

The development of the designer-planner world is separate from the traditional interior decorating world. That is how I see that the problem has come up, and that is how it was put to me in a discussion with my constituent.

Mr. Chairman: Thank you, Mr. Renwick. Minister, do you have any final comments?

Hon. Mr. McMurtry: I certainly understand the problem as articulated by Mr. MacQuarrie and Mr. Renwick. I think this matter will be the subject of some discussion. The problem will clearly have to be addressed, and we will do the best we can and keep the committee advised.

Mr. Chairman: Thank you, Mr. Robinson and Mr. Fairbrass, for being here. It was a rather long session. Thank you again.

Mr. Fairbrass: Thank you very much for your time, gentlemen.

Mr. Chairman: Before proceeding to the next witness, I would like to draw to the members' attention a letter from Doug Beecroft addressed to the Honourable Roy McMurtry. It is in regard to the Courts of Justice Act, with respect to meetings with the Advocates' Society. Some members indicated that they would like to attend.

The clerk will distribute copies of the letter, and if you would like to attend, you will have to get in touch with Mr. Beecroft.

ASSOCIATION OF CANADIAN INDUSTRIAL DESIGNERS OF ONTARIO

Mr. Chairman: We will now move on to the next group of witnesses, which is the Association of Canadian Industrial Designers of Ontario, Murray Armel, QC.

Mr. Armel: Mr. Chairman, Paul Arato, who is the president of The ACID O, is here with me today. If there are any questions, he can assist me or you can direct questions to him after the appropriate time.

I, of course, represent ACID O. Our association has some concern with the legislation, primarily with the Professional Engineers Act and to some extent with the Architects Act, in that it may constitute a threat to the existence of this particular body.

As I listened to the previous witness, this concern was reinforced. I have had discussions with Mr. Fram, and I believe that the intent, as was said to the other group, was not to

threaten or eliminate the group I represent. However, if one examines the wording--for the moment I am talking about the Professional Engineers Act--both as to the definition and the exception, it seems as though it may. Words, fortunately or unfortunately, are interpreted by others--lawyers, judges and so on.

The reason we are here today is to express our concern and to see if there is some method that might be of assistance. We make a suggestion in the brief; I will go into that in a moment.

I was gratified to hear that there was no intention on behalf of the Attorney General to threaten the previous group. I would hope that same feeling is expressed on behalf of this group. On that optimistic note, I would like to deal with my submission to you in four parts. I am not going to go through the brief in detail, although I will refer to it.

I would like to describe what designers do by maybe giving you a short history, along with the qualifications of the association. Our concern, I may say, is just a simple one of the wording. Lastly, but by no means least, I would like to suggest to you the importance of the profession.

The designers are a group of people who process or manufacture a product, taking into account human factors and aesthetics. The first page of the brief, the one that is indented and in quotes, sets out the definition. It is taken from a pamphlet put together by ACID O, which is the Association of Canadian Industrial Designers of Ontario.

I want to read it to you; I think it is of help. It says: "Industrial design is the professional service of creating and developing concepts and specifications that optimize the appearance, function and value of products and systems for the mutual benefit of both user and manufacturer."

They take a product, shape it, look at it from the point of view of size, colour, material--handiness, if you will--prior to the product being mass produced. That is the key function of industrial designers.

Examples are given. There is some overlapping in the engineering profession. One example we cite is an electric fan. You can see that with respect to that product, the engineers are charged with seeing it will work and the designers are charged with seeing that someone will be able to use that fan in a convenient manner; to that extent, the two overlap.

I did not have enough copies of this booklet to distribute to all members of the committee, but that is just a rundown on what is covered. There are pictures of the types of things that are designed. There is also, at the very end--it is a very colourful document--a photo of some members of the association of industrial designers who do some interior or environmental design, and that is a slight concern with respect to the Architects Act.

We will just take a page at random. If you look at page 7

you can see the polisher; they would design the handle, the colour and the size so that it fits in the right drawer and things such as that, of human and aesthetic value. Engineers may become involved in some part of the process. When they do, they are consultants, I may say. That has been the practice.

On page 11, you will see another type of product and the same remarks apply to that.

The art of industrial designing--some of you may know, but I think it is important to have some education on the subject--became prominent about the 1920s. The organization in Ontario was incorporated in 1948. It has about 120 members in Ontario. It has a national organization and that organization is a member of the international organization of several thousands. The best estimate is 50,000.

There are many industrial designers who are not members of the association, but they perform that function in that they are an industry as designers and companies that manufacture products for mass production, or they are in the public service.

The qualifications are twofold. They both require involvement in two products that are in the process of production. One guideline, this is on page 4, is that they must be graduates of an industrial design school--there are three in Canada: Carleton, Montreal and Alberta--plus involvement in two designs in production.

The other end of it is a graduate of an institution--there are many; the one that is cited is the Ontario College of Art--which has an industrial design department and they must then have three years of experience, together with a major contribution to two products which are in production.

With that brief background, I would simply like to put the position to you, the concern and perhaps the suggestion and see what you think.

The definition, and I am talking now about engineers, is in clause 1(m). It reads, "'practice of professional engineering' means any act of designing, composing of plans and specifications, evaluating, advising, reporting, directing or supervising wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles."

3:50 p.m.

What the designers have traditionally done and, with respect, would like to continue to do, is to design products. It seems to us, as is stated in the brief, that the mere design of the product in itself would not necessarily be caught by this definition. As long as you are simply designing it, it has not gone into production, as I understand it. Public safety is not a concern and, therefore, you are not caught. But the very design may be of a product that endangers the public safety and you cannot do that.

If it is not intended to do that, and I suggest to you most strongly that interpretation is open--and I am here today because of the concern about it--the exceptions subsection 12(3) should clearly state that.

The brief suggests a way out in clause 12(3)(b) at the top of page 7. The intent is that when a product is designed, if engineering principles are required and public safety is involved, an engineer should be retained and consulted for that purpose. That is what has been done until now and that is clearly what we would like to continue. Our concern is that it be made abundantly clear that the definition section does not prevent designers from doing designs, evaluating and reporting. I believe it is open to that interpretation.

There are similar comments on the Architects Act with respect to environmental designers. At the end of the brief we have inserted a similar suggestion as clause 11(3)(e) of the Architects Act on the very same point. I emphasize again that I am addressing my major remarks to the Professional Engineers Act.

As I mentioned at the opening, I would be gratified to hear the bill is not intended to eliminate these people from their profession. On page 8, the brief says the Attorney General on November 17, on the introduction of these bills, made it clear it was not intended to eliminate them. You can see his definition. He then says that the new definition by making it narrower achieves that purpose. That is the rub. The wording creates that concern and I see no difficulty if it is clarified. That is the point.

I suggest it would be a severe catastrophe to inhibit in any way this talented and creative group of people. They exist as a profession and they are very concerned that this may happen, I think with just cause. Industry relies heavily on them. As the brief says, the federal and provincial governments provide grants and incentives to designers and to manufacturing companies to hire designers for these products.

One of the key industries is the plastics industry, where their services are much sought after. That has about 50,000 people. You can see the amount of dollars, goods and exports that are put forward. The association's amendment makes it clear and I urge you, gentlemen, to ensure that it is incorporated in both statutes so the designers' function can continue without a threat.

Mr. Chairman: Thank you, Mr. Armel. Mr. MacQuarrie, do you have a question?

Mr. MacQuarrie: Yes, I have a question for Mr. Fram. Suppose I am an individual, not necessarily a trained industrial designer, and I come up with a concept for an improved design of something or other.

Mr. Laughren: A better mousetrap.

Mr. MacQuarrie: It is not patentable, but I send it away and get it registered in the patent office as an industrial design. Then I look around and there are a number of interested

manufacturers who would like to have a licence on the thing. Am I operating in contravention of the Professional Engineers Act?

Mr. Fram: Does your little invention create a risk of safety to the public?

Mr. MacQuarrie: Conceivably. If it was a container or a--

Mr. Laughren: A big mousetrap.

Mr. Armel: Even a chair. You can design a chair, and that chair might fall down and hurt somebody--

Mr. Fram: But there are no engineering principles involved in a chair.

Mr. Armel: My friend here will tell you there may well be. That is what we are concerned about.

Hon. Mr. McMurtry: It depends how large the person is sitting in the chair.

Mr. Armel: As a little fellow I do not have any concerns.

Mr. MacQuarrie: As one who has had some peripheral connection with industrial property of one sort or another, I just wonder what sort of situation the designer in those sorts of circumstances would be in, assuming that engineering principles are involved and assuming that the product could involve public safety of one sort or another.

Mr. Fram: In the Professional Engineers Act there is already an exemption for "an act that is within the practice of professional engineering where a professional engineer assumes responsibility for the services within the practice of professional engineering to which the act is related."

Mr. MacQuarrie: I am not a professional engineer or anything; I am just a guy with an idea that I have registered properly as an industrial design. Where do I stand?

Mr. Fram: Certainly as I interpret the definition, in designing it and in sending it to the patent office you are not practising professional engineering. Now you have come to the point at which you are going to get a commercial licence for it or issue a commercial licence for it. That is when I think the role of the professional engineer comes in, and perhaps the APEO can correct me if I am in error here.

Mr. Breithaupt: In other words, your manufacturer has obligations that you as the inventor do not have.

Mr. Cagney: My name is Cagney, APEO. I have the specific question, Mr. Fram. Would you like me just to elaborate from where I sit?

Mr. Chairman: I think you can elaborate.

Mr. Cagney: Perhaps an example from personal experience might be useful.

At one time I was the president of a company that manufactured equipment for the health care market, including sterilizers. Sterilizers, as you probably know, are pressure vessels. They are run at high temperatures, at high pressures and vacuums, both steam and gas. Many engineering activities are involved.

Many years ago, before industrial designers were employed by that company, we had some wonderful sterilizers from an engineering point of view, but they were the ugliest, most impractical things you ever saw to operate.

Then my company some years ago undertook to engage industrial designers to work in parallel with its engineers in the designing of all of its equipment. It found much more ready market access for the products. They were more practical in use in hospitals. The door swings were right; the controls were colour coded. The industrial design contribution to that equipment was immensely important in a practical and in an economic way.

At no time, however, was there any suggestion that the industrial design contribution invoked the use of engineering principles to the extent that under the definition in the proposed bill we would consider as an association taking enforcement proceedings against the designer for the work he had done.

I think your point was about coming to a patent office with an idea and, having received a patent, you decide to seek a licence to manufacture and you are now involved in the engineering area, in which engineering is essentially the commercialization of that idea.

In so far as engineering principles were involved, and if that equipment or that product were to have any impact on the public safety, health, welfare and so on, I would suggest that to do the commercialization of that product without the involvement of a professional engineer would be contrary to the provisions of the act. I think this is exactly what we discussed for some hours yesterday.

4 p.m.

Hon. Mr. McMurtry: The difficulty seems to be, of course, that people who are not engineers, including lawyers, may have very different views as to what involves engineering principles; and therein lies at least a large part of the problem. Again, we are dealing with legislation that does require a commonsense approach, particularly in view of the many statements of principle that have been made.

Certainly, we recognize that industrial designers are a very important component in the Canadian economy today. As we wrestle with words, I think it is important to note that any overreaching in relation to this legislation would be of great concern to the Legislature. But again we will continue to wrestle with the words.

Mr. Armel: I would like to make just one comment, and I see Mr. Arato would like to make one also.

I appreciate what Mr. Fram is saying about subsection (a). Maybe we are wrestling with words, but it is enough of a concern that somebody who is not here today but out in the street may have to wrestle with those words. We want to make sure as clearly as we can that they do protect.

That exception again defines that the exception is an act within the practice of professional engineering. You are again referring to all the criteria in clause (m) which, as I indicated before, provide that very concern. The preparation of the plans in themselves, where the public safety is concerned and engineering principles are involved, will create the problem.

I invite you to examine clause 12(3)(b), which I think just adds that exception more definitively. Where there are professional engineers and the public safety is involved, matters of life and health, that is when the engineer comes in. The intent is to carry on exactly as has happened; when they are designing the particular product in this book and it requires the engineering principles and there is a safety factor, of course the engineer is consulted. That very thing is done today.

From what I hear and read, it is not intended to alter that. I want to make sure that is so, and this suggestion seemed to me to do that.

Paul, do you have a comment you want to make?

Mr. Arato: Yes. When our profession first was developing, we very definitely relied on engineering skill, interpretation by engineers, for the production of the products. That is going back to getting our tradition first from Europe and then from the United States where most of the manufacturers of almost any product would have, as a minimum, one production engineer on staff.

In Canada, with all the small manufacturers around, most of the manufacturing is done by small businesses. Most of the manufacturers do not have any engineers on staff. That is most unfortunate. However, it did something for our profession. It created or added an extra dimension within the curriculum in educating our designers.

For example, if you go to Carleton University, the design graduate would be going through the same first two years of engineering curriculum as a mechanical engineer. Once he is in the profession, he would have a grasp of some of the engineering principles anyway. After all, engineering principles are nothing but applied sciences and anything therefore is in that category.

Coming back to what I want to say, when we design a product, we are the people who keep that product within the criteria of aesthetic and human factors. But we also look at it from the marketing, functional and manufacturing or production point of view. We do not engineer the product as such, but with our

training we recognize where product engineering is necessary, where mechanical, electrical or structural engineers might be called in.

What I am trying to say is that with manufacturing in Canada to date being done mainly without any service from professional engineers, we are providing manufacturers in this position with designs that recognize where the service is necessary. We advise our clients when to call them, and we call them in ourselves where we feel the production process might need engineers. On the other hand, if the client has staff engineers, we work along with them much the same as is done in Europe or the United States.

Mr. Chairman: Are there any further questions to the witnesses by the members?

Mr. Fram: I have a problem, Mr. Armel, with the exclusion. It may bring us around the corner again, because we still do not know the act we are talking about.

Again, the idea behind the exemption is that provided the professional engineer assumes responsibility for those aspects affecting life, health and safety, the public welfare, then it should be covered. The problem you find with the exemption now contained in clause 12(3)(b) is a wording problem with reference to services etc. I am just throwing this out, but what if that read, "from doing an act that is within the practice of professional engineering where a professional engineer assumes responsibility for all matters concerning the safeguarding of life, health..."?

Mr. Armel: Sorry: "for all matters"?

Mr. Fram: "...for all matters concerning the safeguarding of life, health, property or the public welfare."

I am just wondering if I am on the right track.

Mr. Armel: Yes, I think so. I am not sure I agree with your wording, but the point is that it concerns the public safety, health and welfare. We are just addressing whether it is the word "matters" or "act."

Mr. Fram: But you are really concerned about the other things. There is no difference of opinion; and indeed the engineers agree totally. I think we can come up with something that will work. The only difference is that we think we have done it already and you do not.

Mr. Armel: I wonder if the committee is aware of our concern. If the intent is to ensure that the industrial designers carry on, our concern is that two, four or eight heads cannot come together and agree on that; that is really the point. Up until now we have not quite been able to do that; that is really my point.

Mr. Fram: You have to put it in historic perspective, in that everything an industrial designer now does is prohibited by the Professional Engineers Act.

Mr. Armel: Yes, it could be.

Mr. Fram: In a question of good faith, we cannot have anything but the best of good faith, because the engineers have never prosecuted a designer.

Mr. Armel: We would like to ensure that continues.

Mr. Fram: I understand.

Mr. Armel: The other aspect, and I did mention it at the opening and it is in the brief, is that you can address your thoughts to the similar exception in the Architects Act with respect to that small group.

4:10 p.m.

Mr. Chairman: The next witness is Dr. Peter Kirkby.

The clerk will distribute Dr. Kirkby's briefs. They are exhibit 28 and exhibit 24.

DR. PETER KIRKBY

Dr. Kirkby: My name is Dr. Peter Kirkby. I am a scientist, physics being my speciality.

It has been a great pleasure for me to have seen this committee in action and to hear the briefs on Bill 123. It is an even greater pleasure to be a participant. I wonder what it will be like after I have gone through the experience.

I am aware of the change agreed to in the practice of professional engineering for natural scientists, and I am encouraged by this. The position I adopt in my brief, Bill 123 and Scientists, which I trust you all have, still needs the attention of this committee. However, I should note that it is based on the published form of Bill 123.

This brief is supported by over 300 scientists, all of whom oppose Bill 123 in its present form. In this group there are 40 professors, including the chairman of the physics department of the University of Toronto and Professor Harold Johns, who has been instrumental in applying physics to biological work related to cancer.

The scientists included are physicists, medical physicists, geophysicists, chemists, biologists, safety officers, ecologists, hydrogeologists and the Ontario chapter of environmental biologists. There are 150 members in that group. Included is Dr. Brenciaglia, a physicist, who is manager of a group of 28 scientists and engineers whose object is to ensure the safe and effective use of nuclear fuel for the production of electricity in this province.

I should add that this support was gathered over a four-day period. Additional support that I have not attached to this brief has come from W. J. Penn, who is also a physicist. He is the

manager of the nuclear studies and safety department of Ontario Hydro, and he supervises 150 scientists and engineers in his area.

The structure of my presentation: I shall give a short introduction to provide background for the brief, Bill 123 and Scientists. I wish to ensure that this committee is aware of the role that scientists play in protecting the public interest in this province.

I heard a snigger. Did I hear a snigger? Good; I am glad I did. I am sorry, but I respond. Personally, I think everybody should be in front of me. It is just a reflection.

Mr. Gillies: It is your back you have to watch.

Dr. Kirkby: It is not protected at all.

Hon. Mr. McMurtry: You would never make a politician.

Dr. Kirkby: I trust that Bill 123 will be revised to reflect the equality that exists by tradition for both the engineer and the scientist to protect the public interest in the technical domain.

The proposal I put forward, and it is supported by this group of 300 scientists, is that the licensed scientist who protects the public interest be defined in the revised act and that the appropriate changes be made to include the licensed scientist as a member of a new association called the association of licensed scientists and engineers of Ontario.

What is the problem? The assumption used in formulating Bill 123 is that the work of scientists in discovery, and indeed their work in most aspects of applied science, is protected in Bill 123, either because the work does not require the application of engineering principles or because the work does not create a substantial risk to life, health, property or the public welfare. This assumption is not correct. Bill 123 defines the practice of licensed engineering in such a way that this cannot be distinguished from the practice of the scientist who protects the public interest.

Many of those scientists who have supported this brief are protecting the public interest; in fact, there are 166 signatures from individual scientists who are indeed protecting the public interest. Are they to be obliged to become members of or holders of limited licences from an engineering body?

Scientists do protect the public interest. I have had nine years of training in physics at McGill University, where I earned my BSc, MSc and PhD degrees, followed by 19 years practising as a physicist, 17 of which have been in Ontario. My current responsibility involves the security of the electric transmission system of this province. In the course of this work I may design, compose plans and specifications, evaluate, advise, report, direct or supervise. Many scientists in the province protect the public interest, and there has been no legal impediment to doing so in any previous professional engineering act of this province.

The report of the Professional Organizations Committee fails to recognize the contribution provided by scientists. This is perhaps the origin of the fact that Bill 123 does not respect the traditional role played by scientists. In particular, their recommendations 4.1 and 4.2, which enhanced the supervisory role of the licensed engineer and introduced the cease and desist order, failed to recognize the impact these changes would have on scientists.

A major failing of the Professional Organizations Committee was the lack of input from employers of scientists and engineers as well as no input from scientific bodies. This is in sharp contrast to the Finniston report, *Engineering Our Future*, a study of worldwide engineering practices that was mentioned earlier in these proceedings.

What is the number of graduates involved each year in Ontario? In 1981 there were 200 who graduated in architecture, 3,700 who graduated in science and 4,200 who graduated in engineering. A great deal of thought has gone into the 200 architects. Do we give no thought to the larger group of scientists?

Here is one example of the financial impact involved. The national financial commitment to research and development and related activities in the natural sciences and engineering was \$2.3 billion in 1981. In addition, I note that what we are dealing with has a strong bearing on the future wealth of the province. Both the science council and the National Research Council stress the need for scientists to enhance our position in world markets.

4:20 p.m.

I now look at the parent act. The parent act provides an exemption for the bacteriologist, the chemist, the geologist, mineralogist and physicist. In practice, this is not sufficient. It is an example of theoretical principle that may not be operative in practice. Scientists may find they are not considered for a position unless they first become a professional engineer, or that a requirement of employment is that they become professional engineers or as scientists they may not become supervisors. I stress for the committee that this is an example where employers should have provided input.

I shall now read my two-page brief which, I am very happy to say, is an example of co-operation between both scientists and engineers because we have jointly produced it and we jointly support it. You will find there are eight engineers who are supporting that brief.

Mr. Mitchell: Yes, I noticed on reading through the brief that a number of them have signed the petition.

Dr. Kirkby: Yes, thank you. I shall conclude with one additional paragraph of my own. I shall now read the brief titled Bill 123 and Scientists:

"'Practice of professional engineering' means any act of

designing, composing of plans and specifications, evaluating, advising, reporting, directing or supervising wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles." That is a quote from Bill 123.

In Ontario, "practice of professional engineering" is an exclusive right conferred upon licensed engineers. Bill 123 defines a new practice that is an enlargement of the practice defined in the existing act and includes activities carried out by scientists. We wish to advise the committee on the administration of justice that this bill does not respect the traditions established within the province for scientists.

There are many scientists who, by their practice and position, protect the public interest. These scientists should not find that they are required to obtain a licence or a limited licence, or a certificate of authorization from an engineering licensing body in order to practise. Yet this is exactly the result, if not the intent, of Bill 123.

Engineering principles in the new definition of the practice of professional engineering, proposed in Bill 123, are not defined, and cannot be distinguished from scientific principles. Since the practice of professional engineering is the exclusive preserve of the licensed engineer, scientists could be in violation of the revised act and would be liable to fines. To avoid this, scientists would be obliged either to become professional engineers or become holders of limited licences in order to practise their profession. The scientific community would then become subservient to the engineering community.

This divisive legal construct, which does not reflect the traditional harmonious relationship that exists between the scientific and engineering communities, is detrimental to both the public interest and the economic health of the province, and undermines the investment in science by the province. Indeed, Bill 123 is a reflection of the lack of understanding of the role that scientists play in our community.

One solution to this problem is to exempt the scientist from the revised act, as has been done in all previous acts for engineers in Ontario. However, the intent of the bill is clearly to define the protector of the public interest in the technical domain as the "professional engineer." The engineer and the scientist both currently perform this role. The revised act should reflect this by defining the licensed scientist and the licensed engineer as equal partners in one combined association.

Such an association should have strict limits to provide licences to regulate and define qualifications, with no authority to provide services to members. Indeed, even the word "professional" should not be used, since the professions may have both licensed and nonlicensed practitioners. In no way should the nonlicensed members be considered nonprofessional.

The recommendation is that the licensed scientist who protects the public interest be defined in the revised act and

that the appropriate changes be made to include the licensed scientist as a member of a new association called the Association of Licensed Scientists and Engineers of Ontario.

Recommendation 13.2 of the Professional Organizations Committee states that all claims to occupational licensure should in future be reviewed by special committees of inquiry. This process has not taken place with the new definition of the practice of professional engineering, which is a significant extension of the practice defined in the current act. As a consequence, it is inappropriate to suggest that the proposal for a licensed scientist should be rejected based on recommendation 13.2, without accepting that the new definition of the practice of professional engineering also be reviewed. The Professional Organizations Committee made no suggestion for major changes to the definition of the practice of professional engineering. The few recommended changes were made to accommodate the architects.

Should it be decided that a special committee of inquiry is needed to consider licensure for scientists, then the same committee should consider the new regime of the licensed engineer proposed by Bill 123. In this situation, Bill 123 should not go to third reading until such a review has been made.

The standing committee on the administration of justice has the duty to produce recommendations that will protect the public interest in the technical domain, have no adverse effects on the economy of the province and respect the traditions and rights of all who live and work in the province. In particular, the recommendations should respect the contribution provided by members of the scientific community who have traditionally worked to protect the lives, health, property and welfare of the people of Ontario.

That is the end of the brief. I conclude with the following final paragraph.

Scientists are included in licensing acts in other provinces in Canada. Alberta and the Northwest Territories include geologists and geophysicists, as well as engineers, in one licensing act for their respective jurisdictions. Other provinces are moving in this direction. I suggest Ontario take the lead by including those scientists and engineers who protect the public interest in one act.

Mr. Chairman: Thank you, Dr. Kirkby. I have a number of speakers, and the first will be Mr. Gillies.

Mr. T. P. Reid: Mr. Chairman, not to cut my learned friend off, but I see Mr. Fram has some comments. Maybe he can save us some questions.

Mr. Chairman: All right, if you like. I thought we would have the questions and then--

4:30 p.m.

Mr. Fram: I wanted to remind the committee that the

Attorney General has already undertaken to introduce a government motion to add to the end of the definition, "but does not include practising as a natural scientist." Therefore, the practice of the natural scientist would be not part of the definition of the practice of professional engineering.

Mr. Laughren: Can you define "natural scientist"?

Dr. Kirkby: I did make that observation at the beginning of my talk to make sure it was known.

Mr. Gillies: I guess my first question to Dr. Kirkby is how do you respond to this change? Does the Attorney General's proposed amendment address the major part of the problem as you see it?

Dr. Kirkby: I would think my brief would have explained the points in essence, but let me just look at my introductory remark. The answer is no, it does not in my profession.

Mr. T. P. Reid: I would say exactly the opposite. I take it you want to be included, not excluded.

Dr. Kirkby: It is a step in the right direction. I am pleased and encouraged with what has been done, but I do not think it goes far enough.

Mr. Gillies: From all these briefs, I do not think for a minute that the day after Bill 123 is proclaimed, either amended or unamended, the world is going to change all that much for the architects and engineers or for anyone else. I think there are thousands of people going about their occupations every day now outside of the act, and they will continue doing so after Bill 123 comes about. My question to you is do you share that perception? If so, what could we do in this act so that more of our good people in Ontario working in the sciences and the technologies act lawfully?

Dr. Kirkby: At this point, there is a complete change in the focus of the definition of the practice of professional engineering. It is a pivotal change, and I trust the committee recognizes this. I am afraid I am going to go through a little history here.

My history would be the evolution of this act. I would start with the year 1922 when a certifying body defined the profession. In 1937, a three-page amendment defined the licensure regime, and there was one line that gave the sole right to practise to this particular group. Everything has stemmed from that sole right. That is why we are having problems now. The moment one line was introduced, a large exemption was necessary. At that time, it was recognized that the practice as defined was too encompassing.

In fact, with the current attempt to try to define the practice in two separate versions, in the discussion draft and in Bill 123, I perceive it is impossible to separate the role of the engineer and the scientist, absolutely impossible. The two roles are so intertwined, you cannot do it.

If protecting the public interest is the objective of this committee, and if those two groups are so intertwined, then logically both of them should be licensed.

Mr. Gillies: The problem then, to put it in simple terms, is that you think way back when the Legislature established a situation that was too exclusive. Ever since then, they have been exempting and exempting and exempting, and we continue to exempt. But this does not eliminate the problem as you see it?

Dr. Kirkby, you sound like somebody who would know a bit about the situation in Great Britain and other jurisdictions.

Dr. Kirkby: I have not lived in Britain for ages and ages, but I studied the Finniston report. In my estimation, that was a very thorough analysis of how to approach things, and they analysed things worldwide.

In Britain, the engineer does not have, as I understand it, anything in the way of certification. They are not even up to that sort of level. They tried to appraise throughout the world what was an appropriate regime to enhance the image of the engineer in Britain. Their eventual conclusion--and they based it on the Ontario scheme--was that licensure in Ontario is ineffective because the engineer picks his own particular area of expertise. His licence allows him to practise over the whole domain, but he selects particularly which area he will practise in. They consider that an inappropriate way to deal with it, and so their final conclusion was that they would request certification rather than licensure, based on the scheme within Ontario.

Mr. Gillies: Would you extend the principle you are suggesting to some sort of licensing or certification for scientists? I know you cannot speak for these other groups but would you extend that to other groups operating in this area? For instance, tomorrow morning we are going to hear from the technologists. We have already heard from other groups which in some ways have an impact on engineering or architecture. How far would you go with this principle?

Dr. Kirkby: Personally, I feel you not only have knowledge but also experience. Somebody who has become highly experienced in a certain area certainly is able to provide protection for the health and safety of the public. I would include, as a unit, as a member of such a body, those technicians and technologists. But that is a philosophical point, not something supported by that brief.

Mr. MacQuarrie: Dr. Kirkby, I am one of those people who sometimes get confused between pure science and applied science and the evolution of the two fields. The technology schools which originated early in the century dealt with the education of engineers and the like. We have seen applied sciences coming ahead in the various faculties in Canadian universities and in North American universities generally. We see technology advancing in tremendous bursts on all sides. I find it very difficult to

distinguish the two and how they are separated to any marked extent. I agree with you in part there.

I am rather intrigued by your suggestion of licensing for scientists. It is a question of how you would define a scientist. For purposes of the act, we have defined it in general terms as physicist, chemist, biologist, etc., but to what extent would a person be required to have training in those fields? Would you allow a pass bachelor's degree, an honours bachelor's degree, a master's degree, a PhD?

Dr. Kirkby: My perception would be corresponding principles to those that would be carried forward with the engineering profession, which I understand would be essentially equivalent to a bachelor of engineering degree followed by two years' experience.

Mr. MacQuarrie: I am not exactly sure what is currently required in an engineering course, but is it not a four-year course in most of the engineering schools? I have been so advised. A pass degree in science at most universities in Ontario is three years, if I am not mistaken.

Dr. Kirkby: Three years for science? I would have thought it was a four-year course for science.

Mr. MacQuarrie: A pass degree, three years after grade 13. I just wonder, where do we draw the line? Where does the person meet the qualifications for licensing and what sort of qualifications should we expect if we license? Essentially, we are licensing for quality or for a given base in terms of qualifications. When you look at the wide range of the scientific spectrum, what are suitable qualifications in, say, physics or biology?

4:40 p.m.

Dr. Kirkby: I always thought it was a bachelor's degree in the appropriate subject.

Mr. T. P. Reid: That makes you a scientist?

Dr. Kirkby: What makes you an engineer? A bachelor's degree and two years of experience, with an ethics exam or something of that nature.

Mr. T. P. Reid: So you are saying a straight BSc and two years makes you a scientist; that is what you are saying?

Dr. Kirkby: I am just trying to put forth something that is equivalent to the engineering model. In actual practice, what frequently happens is someone may practice as a scientist, I would suggest, probably only if they have a master's or a PhD, the way I see it.

Mr. MacQuarrie: I cannot in any way take anything away from the importance of our scientific community. When we are thinking of licensing, it is a question of the problems we face in

basic qualifications, whether they meet certain criteria and what criteria we establish.

With engineers, we have already established those criteria, but I have to differ with you to an extent on the minimum qualifications you would expect of a licentiate in science as a straight bachelor's degree. In a lot of our institutions they look at a bachelor's degree as sort of a lab assistant, in today's market. Some 25 years ago a BSc was pretty high up.

It is just our changing environment, if you will, in the educational structure. More and more people are pursuing education to higher levels.

Dr. Kirkby: Perhaps it is a reflection of how poorly regarded the scientific element is as far as the ability of the scientist to practise in the marketplace is concerned.

You will frequently find, if you are a scientist, that you have a PhD or an MSc if you are practising in the industry, whereas the bachelors may indeed find it is impossible to practise as a scientist, so you do become a technician or a technologist. Actually, it is another example of the way in which the scientific profession is not given the opportunity to develop as much as it should.

Mr. MacQuarrie: I am intrigued by your suggestion, but I see a lot of problems in coming to grips with it.

Dr. Kirkby: Yes, I do not dispute that. I see a major change taking place at present. The engineering association has now taken the protecting of the public safety right up into the practice. In the 1937 act the protection of public safety was not even mentioned, and they were granted licentiate.

Mr. Fram: That was essentially the object of the association from its inception, and the only basic and valid reason for granting a licence to anyone.

Dr. Kirkby: I know that is the case, but if you look very carefully at the act you will find it is appended as a new item in 1968 or 1969 or 1970. It was not there in the act that created certification; there was no mention of the protecting of the public safety.

Mr. T. P. Reid: The *raison d'etre* of the licensing people is to protect.

Mr. Laughren: I have some of the concerns of Mr. MacQuarrie. Is there a major concern that you can now have a scientist, unlicensed, of course--

Dr. Kirkby: That is a ramification of the way this act will describe it.

Mr. Laughren: Exactly. You may have a scientist who is extremely well qualified, perhaps with a doctorate, such as yourself, who is subservient to an engineer and who may know much

more about the problem or the task to be undertaken than the engineer. Yet he must have the licence of an engineer in order to do that job. Is that what is so troublesome?

Dr. Kirkby: I am very sorry, would you please repeat the question?

Mr. Laughren: Is one of the major problems that is bothering you, that you and other scientists find so troublesome--and some engineers, as you have indicated, who have signed it as well--that you can have a very well-qualified scientist, perhaps better qualified than an engineer who has the required licence or paper, but within the law the scientist is unable to carry out that task or tackle the problem because he does not have the designation of professional engineer?

Dr. Kirkby: There are three reasons that I quoted as to the sort of problems that a scientist may face. He may not be considered for the position unless he happens to be a professional engineer, so he is obliged to become one, or he may be forced to become one. He may be accepted in the position but then forced to take up on that; or he may not be able to advance in that position because he cannot become a supervisor. Those are the three things that really are thrust upon the individual as a scientist.

It is an impediment for the scientist, actually, to perform. It is the employer who usually may do that, of course.

The way in which this bill is structured, as I perceive it, there would be freedom for the scientist to do it. The pressure will be, since there is public health and safety there, for the scientist to become a member of the body, and even more pressure now than there was in the existing act, far more.

Mr. Laughren: There is no mechanism now for the scientist to have the equivalent of professional engineer in order that he can do the job?

Dr. Kirkby: Yes.

Mr. Laughren: What about the practicality of being in the existing act? If you read through the entire act, you are suggesting that a licensed scientist, as you put it here--

Dr. Kirkby: It is the bill you are referring to, not the existing act. The bill.

Mr. Laughren: That is correct, the new bill. You are technically correct, yes. Would you be comfortable within that, with all those other strings attached?

Dr. Kirkby: The scientist is protected with the proposed exemption that has been put forward by the minister, yes. The pressure will still be on the scientific community to become members of this professional association.

I still feel that puts the scientific community at a disadvantage. It is just perpetuating it and, in my opinion, it is

going to be even stronger with the putting in of the health and safety items at the forefront of the practice.

The one very important thing, and I must admit it is to the credit of the minister, is that it is being put in the practice. That, I agree, is a very important position for it. I have to accept that.

The Vice-Chairman: Mr. Fram, do you wish to make a comment before Mr. Reid?

Mr. Fram: Peter, one of the problems, and we have spoken on this subject many times, is that if engineers are apathetic, scientists are apoplectic about advancing their own interests and, indeed, getting even certifying bodies that have any governance--I think here about the chemical institute which exists but has had great difficulty, for example, going about getting changes to its private act which does exist to govern its members, to give them a title.

4:50 p.m.

My dealing with physicists and scientists indicates that even if there were and even if there could be proven a need, not for the scientist--I can understand your point of view in trying to advance the interests of scientists who do not seem particularly eager to do that themselves, they seem more eager to do science, but there does not seem to be that nucleus.

In the process of a licensing body, you have to have a nucleus of people who are willing to go out and organize and in fact, control, set standards and do all the rest. I have not seen any of that indication from anywhere in the scientific community, with the exception of you.

Dr. Kirkby: There were 300, actually, who supported the principle I put forward. It is not a lonely position that I have put forward. In fact, I would suggest that it is immensely strong with so many people from the university, as well as from the industrial area. There are 40 from the university and there are--

Mr. Fram: They do not even have a certifying body yet. The Canadian Association of Physicists is the strongest of the scientific groups and there is no federation of those groups that even functions.

Dr. Kirkby: There are a number of different things, actually. There is the Canadian Biological Council, which is a group of many biological societies in the country. There is a professional group of biologists, the Canadian Society of Professional Biologists. There are a number of groups actually. I do not have my list in front of me.

I do not know that your attack is entirely appropriate. In fact, I would suggest that there are other groups, the Canadian College of Physicists in Medicine, the Canadian College of Microbiologists--there are all sorts of groups.

Mr. Chairman: If you have concluded, Mr. Fram, I think we could go to the next speaker, Mr. Reid.

Mr. T. P. Reid: As I sat here, Mr. Chairman, I am reminded of my second-year philosophy course, where all Ss were Ps, but not necessarily all Ps were Ss. You are saying that there is very little difference between a scientist and an engineer, or the differences are so vague that a layman perhaps could not tell the difference as to how they operate?

Dr. Kirkby: It has been impossible for the Attorney General to produce a difference. It has been impossible for the engineering association to do it. It has been impossible for many groups to do it.

Mr. T. P. Reid: That is my question then. What you are saying to us is that all scientists are engineers, but not necessarily all engineers are scientists.

Dr. Kirkby: We are doing (inaudible) theory here. I need a blackboard.

Mr. T. P. Reid: No, is that what you are saying? All scientists are engineers, but all engineers are not necessarily scientists?

Dr. Kirkby: I would have to draw circles to understand it.

Mr. T. P. Reid: If I follow your argument, you are saying that all scientists are, in fact, engineers.

Dr. Kirkby: I am saying that scientists and engineers use the same principles. You cannot distinguish engineering principles from scientific principles.

Mr. T. P. Reid: All right, I am extrapolating that to say that all scientists are engineers. What you are saying by that remark is that all engineers are also scientists.

Dr. Kirkby: I feel there is some subtle trap here and I am very cautious in my acceptance of--

Mr. T. P. Reid: I am glad you are not on the other side of the House. The Attorney General always falls into this trap.

Well, let us accept my thesis--

Dr. Kirkby: No, let us not. I do not accept it.

Mr. T. P. Reid: Are you disagreeing? You are a scientist. Would you consider, in your definition that you went through partly with Mr. MacQuarrie and which we heard yesterday, that all engineers are scientists? You are saying for sure that all scientists are engineers.

Dr. Kirkby: I am dealing with the principles that they use rather than the designation of the individuals. I think it is a lot easier if I stick to what I can see. I do not think that all engineers are scientists, nor are all scientists engineers.

Mr. T. P. Reid: He is using the same principles.

Dr. Kirkby: Yes.

Mr. T. P. Reid: Your argument, as I understand it, as you outlined to my friend, Mr. Laughren, is that basically your concern is that under this act it is an employment problem because if you are not designated as an engineer you cannot apply for certain jobs, you cannot progress in those jobs and you cannot perform certain functions like supervision and that sort of thing. Is that what you are saying?

Dr. Kirkby: I see that this is happening because health and safety will be foremost in the eye of the employer, and then it will be a professional engineer who will be required. I am talking about that.

Mr. T. P. Reid: All right. So we are talking, to use my friend Mr. MacQuarrie's terms, in the applied science situation with Hydro or something like that. We are not talking about pure research science.

Dr. Kirkby: That is right.

Mr. T. P. Reid: That is where we are at. My question following my little doodad that you do not want to deal with is what is then to prevent you under this act from asking for certification from the APEO?

Dr. Kirkby: This is exactly what the minister stated in his introductory remarks in the House. If a scientist does become practised at professional engineering, then he may become the holder of a limited licence, and that means a nonmember of the Association of Professional Engineers of Ontario. But I think that is an inappropriate way for a scientist, who is an equal partner in the outfit, to find himself. I feel it is a very poor position for the scientist to find himself in.

Mr. T. P. Reid: I feel as if I am at Alice's tea party here somehow.

Hon. Mr. McMurtry: You have been in a certain caucus for too long.

Mr. T. P. Reid: In the Liberal-Labour caucus there is a certain schizophrenia. Here we have some people trying to get in and others trying to get out.

Hon. Mr. McMurtry: You have met your match.

Mr. T. P. Reid: It does sound like a Liberal caucus today, except that you change your mind a few times.

The Attorney General has indicated he is willing to exempt the scientists from the bill. You are suggesting you should be included in the bill.

Dr. Kirkby: As an equal member. In summary, yes, that is correct.

Mr. T. P. Reid: Mr. Fram has said that probably the best way for you and others to go is to have an association of scientists and your own organization.

Dr. Kirkby: May I address that? It has already been quite clearly defined that it is inappropriate to create other licensure regimes, and I think it would be a very divisive thing to do. I concur entirely with that as being an inappropriate route to go.

But if you are defining one technical group that is responsible for protecting the public interest in the technical area, and that is the engineer, then the scientist and the engineer are partners in doing that. When the scientific group was given the exemption, you identified who is going to protect that group when they do things. There is an error in logic. You are allowing the scientists to protect the public interest with no control.

Mr. T. P. Reid: All right. But before we get to the same argument we had with the people who were just here, I think the intent of what the Attorney General said was for people dealing in pure science, pure research. When it gets to the point where somebody has designed something or has come up with an idea, when it gets to the point where you are producing a product or are in the public domain in that sense, then you have to be an engineer.

Dr. Kirkby: If you will forgive me, you are failing to realize, just as everybody else did in drawing up Bill 123, that the scientists are already protecting the public interest in the province. They are already all over the place protecting the public interest, and they are doing it without a licence. They are doing it successfully and they are doing it adequately.

5 p.m.

Mr. T. P. Reid: Then it seems to me that it defeats your argument to some extent if the public interest is being protected; that was the argument we heard from the good doctor, and the Attorney General accepted it. But when we get into what you are talking about, I have difficulty in understanding why you, as a physicist for Ontario Hydro, cannot go to the Association of Professional Engineers of Ontario and say, "I want to apply for status as a professional engineer." They say: "Dr. Kirkby, you have a PhD, you have the experience, thank you very much. Here is your licence."

Dr. Kirkby: Are you aware of the problems involved with PhDs frequently doing that? It may take something in the order of 12 examinations to achieve that.

I think it is divisive in that it is enhancing the role of the engineer within our society and not protecting the position of the scientist. The scientific profession is not a legally defined profession; it is a nonexistent profession as far as the legal process is concerned. When you talk of professions within this country, the word "profession" defines the legally defined profession that has certification and licensure. When we use the word "profession," it is a very loose layman term. In your use of the term, there is no profession for the scientists. This shows up when there are analyses of professions in the country. The scientific profession frequently is never heard of. The ramification is quite clear in acts like this: we do not have a presence.

Mr. T. P. Reid: I appreciate what you are saying, but what I can see is that everybody is going to be lined up on the Attorney General's doorstep asking for professional designation and the things that go with it. We have the nurses, paramedics, denturists, a whole list of people. I am one of those who have a little trouble with the idea of professional designation. At the same time, I am one of those who believe people should be as self-regulating as possible. I find some merit in what you are saying, but it seems to me what you are looking for is some kind of public appreciation of the role you have. I can understand that.

Dr. Kirkby: I am creating a balance between the two groups that work harmoniously together and provide the function I see this Professional Engineers Act trying to define.

Mr. T. P. Reid: I can appreciate that. It seems to me the way for you to do that, because a scientist is not necessarily an engineer and vice versa, is to go the route Mr. Fram has indicated and say: "All right. Here are all my fellow physicists in Ontario. We want to be self-licensing, self-disciplining and so on. We would like an association of professional physicists."

Dr. Kirkby: No, I would not use that word. It is an inappropriate and very divisive word. Can I address the word since you have raised it? In the 1922 act the profession was adequately defined as a profession. That allowed everybody to do that work that was defined as a profession. In 1937 the three-page act that gave licensure changed virtually nothing in the certification regime, and it carried the element of "professional" into the licensure domain. It should have been the licensed group that was defined. Indeed, the seal says "licensed professional engineer" or, I think it was, "registered professional engineer."

As time progressed up to Bill 123, the words "licensed" and "registered" have been exorcised, and it is just "professional." They should not have been exorcised. "Licensed" and "registered" should have been there. The profession is made up of both the licensed group and the nonlicensed group. There may be instances where engineers are doing things that both need this licence, especially when you are involved in the health and safety protection aspect. There is due need for emphasizing that it is a licence, that the title is "licensed engineer" and that the professional element is removed.

Mr. T. P. Reid: Then you destroy the whole concept that has been built up over the years of what a professional is. You go back to, I would think, being a licensed body like anyone else. Are you suggesting you have an organization, or whatever you want to call it, that says: "You meet certain minimum requirements. Here is your licence. Go out and do to the public what you will"?

Dr. Kirkby: What is the important thing? Is it to define the body as a licensed body or as a profession? The important thing is to define it so that it is clearly a licence that is given and it protects the public interest. That licence shows they have that ability to protect the public interest, but you do not want to define the profession per se, because there may be some people who practise in the overall area which was defined, for example, in the discussion draft, which does not protect the public interest. They might be in that group too.

Mr T. P. Reid: The whole concept of being a professional is that you are licensed by a self-governing body with certain requirements and you are operating, presumably--I am talking theory, and I tend to think that a lot of these are another name for unions; but besides that, the definition has grown up over the years and that is what it is. You are suggesting now that we do away with that whole philosophy of what a professional is and that we strictly be a licensing--

Dr. Kirkby: I pointed out earlier, there is a different use in layman's language of "profession" and the legal sense of "profession"--two totally different usages of the word.

Mr. T. P. Reid: I consider myself a professional politician because I survived two elections, but I am not a professional politician in the sense that a licensed engineer or a doctor or a lawyer is a professional. I think I am going around in circles here.

Mr. MacQuarrie: Dr. Kirkby, one of the messages I seem to be getting from what you have been saying is that you would like to see the scientists recognized by statute as being involved in the protection of the public health, safety and welfare.

Dr. Kirkby: Yes, that is correct.

Mr. MacQuarrie: The question is how we do it. Your proposal is that we have a new title to the act that brings scientists in as a profession.

I looked through the petitions that you filed as attachments to your brief. Just on a quick count, I see four of the signators describing themselves under the heading "professional scientist," all the rest using the particular fields of science in which they are particularly qualified. This is where I have some trouble in licensing. Do you license under the general head "scientist," or do you license under the particular branch of the science in which the person has particular training, background and experience?

Dr. Kirkby: The engineers have been very wise in using the word "engineering," and I think that is quite appropriate.

They have been very thorough and very careful over that, whereas other jurisdictions have enhanced, say, mining engineering, electrical engineering and so on, and I see that personally as very divisive for, let us say, an electrical group, an engineering group of people. So they have been very thorough and they have done things in a wise way.

I believe the scientists also should recognize the wisdom of doing it in the same way; that is why, personally, I have used the word "scientist."

5:10 p.m.

Mr. MacQuarrie: You are not in favour of Mr. Fram's suggestion that possibly the scientists as a group should come forward and seek their own legislation because you feel that is divisive, and to an extent it is, because I can see an overlapping, certainly, between the sciences and engineering in the first instance. As an alternative, do you think it would improve the present situation if we came forward in Ontario with legislation giving statutory recognition to scientists as a separate package?

Dr. Kirkby: I recognize that is an alternative, and I would welcome that.

Mr. MacQuarrie: It would be better than the present situation. It would not be as good as the one you put forward in your brief.

Dr. Kirkby: I would welcome such a thing, with a specific aim to ensure that such a scientific group joined the engineering group. I would not like to see a divisive element there at all. But of course that would be on mutual agreement, naturally.

Mr. MacQuarrie: Yes. You could always look to future mergers, but I was just trying to explore some alternatives with you. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. MacQuarrie. Minister, have you anything to conclude with?

Hon. Mr. McMurtry: I was tempted to ask the representatives of the APEO whether they wanted to be called scientists as well as engineers. They are shaking their heads vigorously, so we have tried to solve that problem.

I would just like to thank the good doctor for his articulate presentation. It is quite true we have had a number of representations by people under certain headings who want to have some professional association with licensure. Chemists, for example, have approached us, and there are other groups. Of course, as has been pointed out, there are many scientists who simply wanted to be exempted from the legislation. One of your principal recommendations was that we do that, which we agreed to do the other day.

I think Mr. MacQuarrie's approach probably makes a great deal of sense to the extent to which we possibly consider another legislative initiative. In any event, I notice you followed the deliberations of this committee with great interest and I think we are all very appreciative of that, doctor.

Dr. Kirkby: Thank you, Minister. I would not mind just throwing a question at you.

Hon. Mr. McMurtry: I may not be able to throw the answer back at you.

Dr. Kirkby: Would an action like that be an action that the government might pursue? I recognize there is a distinction between a private bill and a government action. I perceive that the engineering one was a government bill.

Hon. Mr. McMurtry: I think the policy is that if it is to create any role that has the ability to give licences which might restrict other people from entering the field, it would have to be a government bill. Private members' bills have been entertained in the past which perhaps related to the use of a particular designation. Even there, I think the committee that deals with private members' bills has found some difficulty. I think it had to do with landscape architects. At first it seemed to some people not to be too difficult but turned out to be much more complex.

The government obviously has to be satisfied. We do not have any brief for the engineers. We do not have any particular brief for the architects or the designers. We think they all perform a very important service. Our brief is strictly to serve the public interest and obviously to protect the public in matters of safety and health as has been discussed.

I think it is a question of the people in your field, people who are very important obviously to the wellbeing of the community, satisfying the government that it is in the public interest to do this. I know scientists, chemists and what not have made the point, and continue to make the point, that there is a significant element of public safety in attempting to raise standards in relation to people who are performing functions that do relate very directly to the health and wellbeing of many citizens in the community. I understand those arguments.

While I understand the human dimensions, I would hate to think we live in a community in which people's professional status is dependent upon whether they are in a self-governing profession. I was quite interested in the comment that in no way should the nonlicensed member be considered nonprofessional. I certainly agree with that underlying sentence in your brief. Certainly, it is not the attitude of any members of this committee, as I have been able to detect their attitudes, that a nonlicensed individual is any less professional for that reason.

In any event, I think the government will welcome any further submissions you and your colleagues have to make. We are particularly concerned here about the public interest, and that

does involve relatively early passage of this bill. It would be unrealistic to suggest that we can examine all the dimensions. I am speaking personally; other members of the committee may have different views. It is unrealistic to expect that our ministry, at least, could examine all the dimensions of your proposal, apart from what we have already accepted--

Dr. Kirkby: Yes, I recognize that.

Hon. Mr. McMurtry:--in the time frame we are dealing with. I know Mr. Fram has told me he has enjoyed very much the very interesting discussions and your own very deep concern about the public interest.

Dr. Kirkby: It is a compliment, Minister, that you have spent so much time talking to me.

Mr. Chairman: Thank you, Minister, and thank you, Dr. Kirkby. On behalf of all the members, we appreciated your being here.

There being no further business, we will recess until 8 o'clock this evening.

The committee recessed at 5:17 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 122, ARCHITECTS ACT

BILL 123, PROFESSIONAL ENGINEERS ACT

WEDNESDAY, FEBRUARY 1, 1984

Evening sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Clerk pro tem: Richardson, A.

From the Ministry of the Attorney General:
Fram, S. V., Counsel, Policy Development Division

Witnesses:

Burke, F. E., Department of Management Studies, Faculty of
Engineering, University of Waterloo
McKichan, A. J., President, Retail Council of Canada

From the Department of Consumer and Corporate Affairs:
Critchley, W., Chief, Service Branch, Bureau of Competition Policy
Innes, J., Bureau of Competition Policy

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 1, 1984

The committee resumed at 8:02 p.m. in committee room 1.

ARCHITECTS ACT
PROFESSIONAL ENGINEERS ACT
(continued)

Resuming consideration of Bill 122, An Act to revise the Architects Act, and Bill 123, An Act to revise the Professional Engineers Act.

Mr. Chairman: I see a quorum. I will call the meeting to order.

The first witness of the evening is Wayne Critchley, the chief of services branch, bureau of competition policy, the Department of Consumer and Corporate Affairs.

Mr. Renwick: Do you realize, Mr. Chairman, that if we had subpoenaed this witness, we would have had a legal opinion from Ottawa saying that he was not authorized to appear?

Mr. Chairman: More than likely, Mr. Renwick.

Mr. MacQuarrie: That is about par for the course.

Mr. Renwick: We would have. We have tried.

Mr. Gillies: Now we have you here, you cannot leave.

Mr. Chairman: As soon as the clerk gives out your submission, Mr. Critchley, would you please introduce your colleagues? Then you may start your submission.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

Mr. Critchley: Mr. Chairman, I want to begin by thanking you and the committee for giving us the opportunity to appear. With me is Jim Innes from the bureau of competition policy. We are here on behalf of Lawson Hunter, the director of investigation research under the Combines Investigation Act.

As I have said, I really do appreciate your agreeing to hear us. We made our request rather late and I know you have a heavy schedule so it is very much appreciated. Unfortunately, Mr. Hunter could not be here so I have come in his place, loaded down with things. We have a written brief which has been distributed and I believe you also have copies of an oral presentation.

Mr. Renwick: Excuse me. Who is your colleague?

Mr. Critchley: Jim Innes.

If I may, I will just follow the oral presentation document you have.

Our reason for requesting an appearance tonight is to point out issues which may arise in the interface between professional self-regulation and competition policy. My comments should not be taken as a criticism of the two professions that are under study here right now, but rather as concerns about the direction of professional regulation generally.

I might add that these comments and the written brief rely heavily on previous briefs which the director has submitted to the Professional Organizations Committee and to the Attorney General.

I should first mention that the Combines Investigation Act does not in any way impinge on a professional association's ability to maintain high standards of competence in a profession. Ordinarily, any agreements which create barriers to entry should raise questions under section 32 of the Combines Investigation Act. Section 32 is the general prohibition on conspiracy to lessen competition.

Parliament took special consideration of the public interest in ensuring that the professions retained their ability to maintain standards of competence and integrity. In this regard, I would point out that the 1976 amendments to the act, the amendments which brought professional services within its coverage, in fact made allowance for collective action relating to standards of competence and integrity by including subsection 32(6), which provides for agreements or arrangements relating only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public in the practice of a trade or profession relating to such service, or in the collection and dissemination of information relating to such service.

It is possible, however, for associations to engage in anti-competitive activities if they have been given authority to do so by legislation. For anybody who is following me, it is "possible," not "impossible," the point being that where in the case of a profession, which of course is in the jurisdiction of the provinces, where a province feels it is necessary that a profession engage in certain types of activities which may otherwise raise questions under the Combines Investigation Act, all it needs to do is pass legislation to give them that power and that takes them outside the Combines Investigation Act.

Under the existing jurisprudence, activities authorized by legislation or effectively regulated by a public body pursuant to valid legislation or regulation are considered to be exempt from the Combines Investigation Act.

The importance of provincial regulation of the professions is clearly established in the decision of the Supreme Court of Canada in the BC Law Society case in 1982. In this case the court found that the relevant provincial legislation empowered the

benchers of the law society to determine in the public interest those things that constitute conduct unbecoming a member of the society. On the facts of the case, it found the activities of the benchers to discipline a member for advertising were empowered by this general statutory provision.

The implications of this decision on the interface between regulated conduct and competition policy generally are of some concern. That concern is greater in the case of groups with self-regulatory powers which are not subject to any supervision by a public agency. Competition law is designed to promote efficient economic performance. Where it is found necessary to replace market forces with regulation, it is important to attempt to minimize the dangers of economic waste which may result, as well as the risk of private interests using regulatory powers to further their own interest.

The principles on which the BC Law Society decision was based will undoubtedly have an impact on competition policy in Canada as they effectively extend the regulated conduct exemption to a larger portion of economic activity. Since the decision, the bureau of competition policy has already observed a tendency in some professions to reinstitute restrictive practices.

While I do not believe it was the intention of the respective legislatures to permit price fixing in the absence of any specific authority, the broad powers granted the professions in question, particularly those respecting the discipline of members, may be found by a court to be sufficient to effectively exempt such activities from the scope of the act.

8:10 p.m.

I am concerned that the number of professions engaging in this type of conduct may increase unless action is taken to limit and define with more precision their legislative powers and confine them to those necessary to ensure competence. Failure to do so will result in a significant portion of the economy being removed from the scope of the act and deprive consumers of professional services of the protection the act may afford them.

It is in this context that we have reviewed the proposals for new legislation governing the engineering and architectural professions. For these reasons it is important that the powers of the respective associations be confined to those that are necessary to license members and to police competence and integrity. These should be clearly distinguished and separated from the economic practices of members, to which the authority of the associations should not extend.

My specific concerns with the proposed acts are in regard to several proposed sections. Paragraph 7(1)18 of the Professional Engineers Act would give the council the authority to make regulations respecting the setting of a suggested fee schedule. According a profession the authority to set or influence fees in this manner may in the future result in denying the public the benefits of free competition. The association could interpret its mandate to police standards of ethical conduct by concluding that

fees below those set out in the suggested fee schedule are unethical and disciplining those who charge them.

Similarly, both the Professional Engineers Act and the Architects Act have proposed subsections that allow the respective associations to pass regulations respecting advertising. The danger involved is that either association may determine that restrictions in advertising are necessary to protect the dignity of the profession. This may result in the denial of consumer access to valuable market information relating to fees or the availability of services.

I want to emphasize that we are not making an issue of the question of advertising, particularly with respect to engineers and architects as such, because I do not think there is any suggestion that there is an intention on the part of those associations to start suddenly restricting advertising. I believe the Professional Organizations Committee found that both of these professions were fairly permissive on this point. The question really is why, if that is the case, there is a need to assign the power specifically over advertising and whether such a standard should be employed for other professions that may come under review in the future.

It is my recommendation that the associations' disciplinary powers should be clearly limited to confine them to those situations where the public is in need of protection. Specifically, we are making the following recommendations:

First, of course, is that the section of the Professional Engineers Act dealing with suggested fee schedules should be deleted. I might just amplify on that briefly to remind you, of course, that the Professional Organizations Committee did not find a need to provide for suggested fee schedules. The committee staff study had specifically found there was no need to put these schedules in these professions, and the Professional Organizations Committee itself said that if there is a requirement for more information for consumers of engineering services, this could be met in other ways, such as the use of fee surveys, which would be purely of a descriptive nature.

The second recommendation is that a new section be inserted that would in essence provide a check on any potential in the future for possible abuses. It would simply provide:

"No person shall be found guilty of professional misconduct by reason only of:

"(i) charging a low fee or, where there is a schedule of suggested fees, charging less than a suggested fee;

"(ii) engaging in competitive bidding; or

"(iii) engaging in advertising, unless such advertising is misleading or deceptive."

The third recommendation, which again is of a general nature, is that the acts provide for the publication of proposed

regulations before their approval by the Lieutenant Governor in Council. Again this is simply to provide an additional check to ensure that members of the public who may be affected by a regulation have the opportunity to be made aware of it before it is actually approved.

At the beginning I thanked you for your indulgence in letting us come on short notice. I have tried to reciprocate by keeping my comments fairly brief and to the point. I think you will find greater amplification in the written submission.

Mr. Renwick: I do not know that what I want to say is so much a question. Despite believing, as I do, in something called co-operative federalism, I feel constrained to repeat my other comment that we have tried on occasion to get federal civil servants to testify before committees of this Legislature and have been denied that opportunity.

I hope, therefore, that the courtesy of this committee will be well noted when you return to Ottawa or when you are in communication with your superiors in Ottawa, because I think it is only if there is an interchange of information and opinions about matters of public concern that we can make any progress in the co-operative federalism of the country.

We found that particularly true in the disastrous financial debacle that took place in this province when there was a split jurisdiction as to the authority various bodies were incorporated under. It hamstrung this committee when it was attempting to deal with the Re-Mor/Astra problems. It was a matter of very serious concern to those of us who are concerned about the capacity of this Legislature to operate.

That is not a particular concern to you, but I wanted to take this opportunity to express that very grave concern I have. It will undoubtedly come up again in the next four weeks because of the conflicting jurisdiction over the various companies that were involved in the problems related to trust and mortgage companies. Perhaps when we move the motion here--I know all the members will agree we should have representatives from those companies that are subject to federal jurisdiction before the committee next week. All the members obviously will agree regardless of party position on that matter, and I assume they will be readily available to the committee. That is so imminent I wanted to mention it to you.

Mr. J. A. Taylor: Having said that, Jim, I have been waiting for you to commend these gentlemen for their very fine brief.

Mr. Renwick: That is my next position. I simply would like my colleagues on the committee to know it happens to be a position with which I fully agree. I hope we will find the ministry receptive to accepting each and every one of the three recommendations that have been put in front of us.

Mr. J. A. Taylor: The Attorney General's alter ego is here and--

Mr. Chairman: He will have a chance to explain it.

Mr. Renwick: With reference to item 3, the advanced publication of regulations, we are very discriminatory and selective in Ontario as to which regulations are available for public scrutiny before enactment and which are not available for scrutiny before enactment. I may say that in the field of securities law in this province, there was a long period of public exposure by the Ontario Securities Commission of the regulations, which are voluminous and detailed with respect to the securities industry, for comment, public input and discussion, including hearings before the securities commission, before those regulations were passed and became law under the Regulations Act.

I have always thought that was a model, if used with discretion. This is one of the occasions when it could be used with discretion because of the importance of the regulations. I would urge the ministry to accept each of the three recommendations, particularly the provision with respect to the availability for comment and consideration of the proposed regulations because they are so extensive and go so much to the gut problems of the regulation of each of these two professions.

Mr. Chairman: Thank you, Mr. Renwick. Are there are any further questions from members? If not, I believe Mr. MacQuarrie--

10:20 a.m.

Mr. J. A. Taylor: There is just one area I thought of interest and that is the fees. Of course, we have been very aware of the fact this legislation is there to protect the public, and what is being thrust upon us and the minister, I believe, is that it is essential that the interest of the profession should be quite distinct and separate from the interest of the public. The two should not come into a position of conflict of interest.

This area of fees seems to be on the borderline. For example, I am thinking of public commercial vehicle licences where rates are approved by a transport board. Taxicab rates are another area.

I suppose the argument is if you do not maintain a reasonable return on your investment or fee, then there are going to be activities, maybe shoddy work by the engineering or architectural professions, whereby the public will suffer damage. Maybe that is through excess competition.

Is there some kind of balance? I do not know whether you can help me or not, but I am not only an advocate, but I suppose a disciple of the free enterprise system. I am all for the marketplace and competition.

Mr. Elston: What in the world are you doing in that caucus then?

Mr. J. A. Taylor: I will deal with you later.

Mr. Chairman: One issue at a time, gentlemen.

Mr. J. A. Taylor: Are you suggesting I should go to the New Democratic Party?

Mr. Renwick: I thought this would be an interesting discussion.

Mr. J. A. Taylor: I was wondering if there are two sides to that coin in terms of where that type of regulation should lie. Should it be a part of an advocates' group, a part of an association that is there to serve the members, or should it be part of the licensing legislation?

Mr. Critchley: Obviously, your question does not lend itself to an easy answer. It might be helpful just to point out one distinction between a couple of the examples you gave.

Where fees or prices are regulated, ordinarily they are regulated by a public agency, a commission or a board of some kind. Traditionally, in the case of many of the professions, a profession would set its own tariff, but it was not subject to approval by any body. A board or commission is acting pursuant to specific powers granted by the Legislature and is responsible to the public.

Currently, as I understand it, the engineers do publish their suggested tariff, but I am not aware that that tariff is approved by any body representing the public, i.e. by the government or the Lieutenant Governor in Council. It is not clear in the provisions here.

I believe the language is that it provides for regulations respecting the setting of a suggested tariff. It is not clear that the tariff itself would be subject to approval by the Lieutenant Governor in Council. I think there is a distinction in those two cases.

I am not really aware of any group in society today, other than the professions, where we traditionally accept this idea that they should set their own fees in a vacuum.

Mr. MacQuarrie: Are you suggesting that a professional should be allowed to set his own fee as an individual, whatever that fee might be?

Mr. Critchley: Yes. In essence, although not to preclude decision by people who are responsible for regulating a specific profession, a province could say, as a general principle, "No, we have exceptions in this case."

Mr. MacQuarrie: I would suspect that your minister, Mrs. Erola, would be making representations to her colleague, the Minister of Health, in respect of the medical profession. Some of them, apparently, want to set their own fees. She does not seem to want to buy it.

Mr. Chairman: Again, Mr. Taylor, are you finished?

Mr. J. A. Taylor: I see that Mr. Fram is anxious to make a contribution; maybe we could have it.

Mr. Fram: I would like to explain the background of this particular provision, which no one has really guessed at so far. The provision simply provides a mechanism for arriving at suggested fees. It does not allow for setting fees that are compulsory or which allow persons who charge less to be be punished.

The history of it is a little peculiar. The consulting engineers and some municipalities have suggested that the Association of Professional Engineers of Ontario want to get out of this function, because the municipalities rely on this fee schedule to get a rough estimate of what the engineering services they are buying should cost, so they will know, generally speaking, if the bids are fair. The municipalities want to have this practice continue as a form of reference. Similarly, the consulting engineers want to have that provided to them.

The formation of the schedule of suggested fees is done by a committee composed of both buyers of services--that is, engineers who represent the purchasers of services--and the sellers of services, the consulting engineers. So they fight over these things. The regulation will provide the forum for setting the suggested level of fees.

The APEO went to a great deal of effort to attempt to see if the Professional Organizations Committee's recommendation on historic fees would be a usable method of providing the kind of information that the municipalities could rely on. Unfortunately, it is not a very good method, because it is not easy to produce the breakdown of fees on a historical basis, to set these guidelines. Indeed, the very fact that the regulating power is limited to suggested fees is probably a strong argument against any power to set compulsory fees in this bill.

There is no reason to think that the APEO will engage in any other type of mechanism to make these kinds of fees compulsory. Historically, the association has not engaged in those functions, and there is no reason to believe that there is either authority to do that, or an intention to do that.

Mr. J. A. Taylor: Thanks very much for making that matter crystal clear, Mr. Fram.

Mr. Renwick: It is a winner.

Mr. Chairman: Are there any further questions?

Mr. Renwick: You have engineers in architecture who are buying services. Are these engineers and architects who are selling services negotiating to set the suggested fees?

Mr. Fram: There is no provision in the Architects Act like this.

Mr. Renwick: Well, I will exempt that honourable profession from this sordid business.

Mr. Critchley: If I may, Mr. Chairman, could I just make one point on that?

Mr. Renwick: I really think that is quite unbelievable, when you analyse it. The consulting engineers who are acting for the purchasers of these services--

Mr. Fram: No, these are employee engineers who are acting for their employers.

8:30 p.m.

Mr. Renwick: All right. Engineers who are acting for their employers are negotiating with other engineers about what the suggested level of fees to the public should be.

Mr. Fram: That is right, a suggested level of fees.

Mr. Renwick: That is why I find that--

Mr. J. A. Taylor: Do you feel that might be a somewhat incestuous, Mr. Renwick?

Mr. Renwick: I would be inclined to think you and I would agree about that, Mr. Taylor.

Mr. J. A. Taylor: Capitalist!

Mr. Chairman: Mr. Critchley, I think you wanted to make a comment.

Mr. Critchley: I just wanted to point out that from time to time we get complaints--well, we always get complaints, but from time to time from public agencies about professions and the fees that are charged, and the fact that all members seem to be charging the same fee. In some cases, lo and behold, they go and look at their own statutes and find they have granted the power to set fees.

What I am getting at is there was some uncertainty in the law for a number of years. It is now quite clear, as a result of the the Supreme Court decision to which I referred, that this power in this case would provide an exemption, in essence, for the professional engineers from competition legislation. As I was saying, obviously that is a decision for a Legislature to make.

The point is that because the law is so hazy in this area, I just wanted to make sure it is understood that is the implication. Often, of course, suggested tariffs end up becoming the minimum tariffs in so many of these cases, or it does not necessarily take a decision to discipline a member for charging less to have the effect that most members end up charging the suggested tariff.

Mr. Chairman: Thank you, Mr. Critchley. There being no further members, the parliamentary assistant, Mr. MacQuarrie.

Mr. MacQuarrie: For many years I have had more than passing interest in the Combines Investigation Act, and I, too, am a supporter of a free and open market and free and open competition. When it comes, particularly--

Mr. Renwick: I certainly wish there were more of my colleagues here today.

Mr. MacQuarrie: Going all the way back to Weidman-Shragge, which is recognized as one of the benchmark cases in the matter of conspiracy to set prices, when we come to the professions and professional associations that are given statutory authority and have that authority in the public interest, charged with safeguarding that public interest within their spheres of operation, the question of fees becomes very difficult.

The Law Society of Upper Canada, with which I am familiar, particularly with the county law associations that do set recommended tariffs from time to time, indicates quite clearly these are recommended only. I have never been aware, possibly you are, of any professional, in any field, having been charged with professional misconduct because of the fee billed, whether it was a matter of donated services, services provided for a dollar; whatever was billed, I am not aware of any such instance.

The tariffs, as I understand it, are recommended tariffs set by the various associations. If a solicitor, as I am, wants to charge a client under that tariff for reasons of circumstances, whether it is the client's ability to pay, the client's economic circumstances; whether it involves a friend or any of a number of things, he can charge the fee he wants.

Where I have a little difficulty is with this proposal you put forward that no one should be guilty of professional misconduct if he engages in competitive bidding. As a professional, and I am speaking only personally, I accept fees on the basis of the ability to produce a reasonable income. I feel that competitive bidding detracts from the professional aspects as well as the practice aspects of an operation. If you get into a bidding game with every other professional in the same line in town you end up with chaos in the marketplace and the consumers, that is the public, are the ones who possibly suffer as a result.

On the question of professional advertising, I have always wondered why a person could not put a card in certain publications, but that is something we have learned to live with.

I wonder if you are aware of anyone, in any profession, anywhere, having been charged with professional misconduct because they charged a fee below the recommended tariff?

Mr. Critchley: I understand that in Quebec, in the case of notaries--I cannot say they have necessarily been charged but they are investigated if they charge less than the tariff. I think your point is well taken. It is certainly not a common occurrence.

The difficulty is that one does not need to resort to the very

extreme mechanism of taking disciplinary action, because the effect will often still be the same. About a year or so ago I saw a policy statement from the Law Society of Upper Canada--and as you say the law society does not have a tariff, it is actually the county law associations--

Mr. MacQuarrie: No, it is the county law associations.

Mr. Critchley: It has always been my understanding that those tariffs exist but are not widely used; at least that is what I have been told.

Mr. MacQuarrie: They are published every so often.

Mr. Renwick: They were widely used years ago.

Mr. Critchley: A year or so ago, the law society sent out a policy statement saying that if it had a claim for errors and omissions insurance, and if the person had been charging less than the county tariff or less than a reasonable fee, which was usually taken as being the county tariff, he would be investigated.

That kind of policy could have some deterrent effect on members who might be interested in engaging in little price competition, if that is an appropriate reference, depending on the type of service and where they are.

Mr. J. A. Taylor: Mr. Chairman, I do not think we should get into this area of predator pricing and corporate cannibalism and all that kind of thing. I think we should move along.

Mr. Chairman: I think we have heard the question and the answer. There being no further questions from the committee--

8:40 p.m.

Mr. Renwick: I knew the government members would be anxious to move on from this topic, but the British Columbia law society case illustrates very clearly the sophistication of the legal profession which is involved in it. It may well be that the parliamentary assistant is quite correct, and I cannot go back long enough in history to find out whether the law society ever disciplined for nonadherence to a fee schedule; I just do not know that.

There was sufficient professional pressure that it was unethical, when I entered the practice of law, to depart from the tariffs established by the county law associations. There was a form of ostracism involved if one did. It does not require criminal law or anything else to enforce that kind of intense in-group pressure to maintain fee schedules to the detriment of the public. The law society understands clearly that is the case, because it now protects the profession by insisting that the profession not advertise.

Mr. MacQuarrie, the fact that you may grant reduced fees to a friend prohibits you from advertising that I, if you are a

friend of mine, will reduce my fees in legal cases, or that if you are unable to pay the fee which I expect you to pay, I will reduce the fee because I have a professional obligation. All of those things are still extant in the world of professional fee-setting. Fee is a euphemism for price, and the prices that professions are charging are not subject to the degree of competition which protects the public interest.

I am not going to be forced into the position the Tory members are in of being an advocate of a free enterprise, open market, cut-throat competition system. That is not my position. My position is clear. It is that the in-group pressure on professional organizations which are self-governing bodies with respect to the fees that will be charged to the public for their services has an element of self-interest to it which is not necessarily in the interests of the public.

It is a useful reflection for this committee in dealing with these professional associations, because we will be dealing with other professional associations down the line, to understand that there is a serious question as to whether self-governing professions should be allowed, by virtue of provincial legislation, to limit advertising, for example, to the extent they do as far as the prices they will charge for services are concerned. It is a reasonable, sensible position.

I trust some of the Conservative members will try to understand the immense contradiction between the position they always state, that they are in favour of free enterprise and the open market system, and their insistence on passing legislation which prohibits the public from having access to any market competition with respect to professional services.

Mr. J. A. Taylor: It is hard to be a purist today, Jim.

Mr. Renwick: I guess you chaps have to be. I did want you to know they are the Conservative members. They are not the New Democratic Party members over there.

Mr. Chairman: I think he got the message.

Mr. Renwick: It is really a fascinating evening. I have been particularly interested in Mr. Eves's remarks on this.

Mr. Eves: I have not made any, Jim.

Mr. Renwick: That is why I have been so interested in them.

In fairness, though, when the bill comes through the committee, I will certainly move the one on the advertising aspect. I will likely move the deletion of the suggested fee one. I do not really think if we delete paragraph 18 about suggested fees we need go on to the question of whether or not it is professional misconduct. I certainly think it would be very important that the regulations be available for public inspection and discussion beforehand, before these bills are published.

I find myself in considerable sympathy with the position which has been so eloquently put before us by the representatives of the federal government. I have not been able to spark any--

Mr. Chairman: Mr. Critchley, in fairness to the Liberal Party of Ontario, Mr. Elston is a Liberal. I do not want you to get the impression that we only have NDP and Conservative members here.

There being no further questions to you, Mr. Critchley and Mr. Innes, on behalf of the committee I want to thank you for appearing.

Mr. Elston: By the way, what about my request last night about the regulations?

Mr. Chairman: I think you should talk to the Attorney General about that.

The next witness is Mr. Eric Burke of the University of Waterloo. Mr. Burke, would you please come to the table? The clerk is distributing your exhibit, and as soon as he is finished you may proceed.

F. ERIC BURKE

Mr. Burke: Mr. Chairman, while you glance at the exhibit, which is very brief in contrast to the previous submission, I would like to establish that I am grateful for your time not because I represent the vast powers of the government in Ottawa, but because I represent a concern of myself as a member of the engineering profession in relation to the revised Professional Engineers Act. I am in the strange position, which makes me feel slightly uncomfortable, of talking about matters of law I have learned from eminent legal minds, as I believe is clear to the chairman. I gave him a copy of the covering letter in which I indicated one of the four sources of the views I will urge upon you.

Basically, I am speaking from a point of view that has been increasingly confirmed to me by five very eminent judges who, in listening to my presentation of key phrases of the revised Professional Engineers Act, came to sharpen my perception that there is a series of three phrases that I suspect are, without in any way wishing to infringe on the principles of the initial impetus for the revision of all the acts or statutes governing the self-governing professions in Ontario, contained in the Royal Commission Inquiry into Civil Rights, the first volume of the Honourable Mr. Justice McRuer's work on the topic, and then are detailed by the Professional Organizations Committee later.

8:50 p.m.

Essentially, the substance of my submission starts on page 2, exhibit 37, which merely quotes a key recommendation of the Royal Commission Inquiry into Civil Rights, which in turn was partly quoted by Mr. McMurtry when he introduced the two acts for first reading on November 17. This quotation is probably more familiar to many of you who are lawyers than it is to me.

I suggest that we can take two items in the act together. One item is subsection 2(5), which is concerned with the capacities and powers of the association. Without being permitted to quote word for word, the reaction of the eminent judges I consulted was that this was a very substantial power and they wondered whether it had ever been publicly demonstrated that such a power was needed.

It is perhaps felt that the traditional statutes, including the Health Disciplines Act, have left such power as the power of a natural person in the statutes because they have not succeeded in meeting the criteria of the Corporations Act, which is quoted from at length in section 50 of this act. The first time the key clause appeared in the Corporations Act was in the 1960 revision, I believe. The key provision in the current printing, 1980, is, "A corporation, unless otherwise expressly provided in the act or instrument creating it, has and shall be deemed to have had from its creation the capacity of a natural person."

The position seems to have been taken that in the earlier versions of the Professional Engineers Act and in the current version of the Health Disciplines Act and innumerable statutes incorporating self-governing professions, such an expressed provision removing the statutory corporations from the octopus-like tentacles of the Corporations Act had not been met.

I suggest that in revising or reviewing this act in committee you are faced with a painful task. I can only sketch the direction in which you should go, because I am not a lawyer. At the bottom of page 2 I have suggested that the wording "for the purpose of carrying out the principal object of this act, and for no other purpose, the association has all the necessary capacities and powers" is quite sufficient for the corporation to undertake its business.

It must be within the wisdom of lawyers and draftsmen to write the sentence sufficiently tightly so that the huge, octopus-like tentacles of the Corporations Act regarding common law corporations can be kept out of this Professional Engineers Act. In its present form, it appears as section 50 with 24 clauses and is prefaced, to the great dismay of all the learned judges with whom I have discussed this, with the phrase about making such changes as are necessary.

Every one of the learned judges told me: "For heaven's sake, here are 24 clauses and if anything were ever to come in front of us, we would not have any ground on which to stand. We would have to decide what would have to be changed before we dragged this huge octopus of a controversial act into an interpretation of what is really a simple statute, which from a legal point of view is just a statute outlining what professional engineering needs by way of powers and capacity.

I believe there has never been any lack of power or capacity in the past and perhaps there is unnecessary anxiety about a need for more power. I come back to my introduction and say that if there is such anxiety or such uncertainty about whether there is enough power without invoking the powers of a natural person,

everything that a common law corporation is granted, with 24 clauses specifying just how--except it is not specified just how--with necessary modifications it is specified. I am not at liberty to say which of the five learned men told me with annoyance that it is bad writing of legislation to use two acts if one act will do, but this is what I was told.

I am suggesting to you that the most important thing to simplify this act is to remove this confusion between a statute and a statutory corporation and the powers or capacities of a natural person. I have gotten to know the association quite well over the last 23 years, and I know it will not open a hamburger stand or pay for a hamburger stand in British Columbia; but if it had the powers of a natural person, it could do so. I do not think it needs the power. I do not think for a moment it will use such power. I think it is possible to take out 25 very difficult, very contentious clauses. That is my main point.

My second point is again a simplification of the principle that no power should be extended unless the need for the extension has been publicly demonstrated, and there is such a power in subsection 8(1) in the act, which contains the wording that the power is granted to write bylaws, provided they are "not inconsistent with this act" and with the two dozen-odd regulations preceding the bylaws.

It seems to me--I will take a phrase ahead of my exhibit--that the present wording puts the onus of proof of an inconsistency with the objects on anyone who complains that a bylaw is, in effect, inconsistent. Such an onus is, first of all, very expensive; and second, only fools like me would take the time to define that such an inconsistency existed and fight it through to whatever level of litigation it would require to show such an inconsistency.

The principle with which I started my submission says quite clearly that the burden is on such a statutory self-governing profession to show publicly that the need for an increase in its power is publicly demonstrable and, moreover, that there is no other means by which the public interest can be adequately safeguarded. I am merely inverting the words of that principle very slightly.

9 p.m.

I suggest to you, in summary, that we have a complication in Bill 123 as it is written at the moment that I believe was an enormous enlargement of the capacities and powers of the association, have been written in such a fashion that there would have had to be a public demonstration that such power was needed to meet the principle to which the Attorney General paid such glowing respects and agreement--he used the word "axiomatic"--such full acceptance, if I read his remarks in Hansard correctly.

If the minister does have such complete acceptance of this principle, then, gentlemen, I think it is incumbent upon you to reduce the powers to roughly where they were. If the growth of the requirement of precision of the Corporations Act since 1960

requires a very express provision in the statute creating, or by revision recreating, the Association of Professional Engineers, then such a sentence should be written and could be written.

If you find that what I have written on page 2 of my submission under "suggested capacities and powers" is not achieving this purpose because it was written by an inarticulate engineer, then for heaven's sake do better, but do it with the original powers and not a vast extension of it.

Similarly, please put the onus of showing that the principal object and in fact the act as a whole is met by any new regulation or bylaw, that the onus of that is on those who require an extension of power and not individuals on the outside, who have neither the time nor the money to prove inconsistency, as would be necessary in the present writing.

Mr. Chairman: Thank you, Professor Burke, for your oral presentation.

Mr. J. A. Taylor: A comment, Mr. Chairman: I believe this was discussed yesterday when the Canadian Society of Professional Engineers submitted its brief. You will recall on page 5 of that brief in the main recommendations, it was recommended that this section be amended so the powers would be limited to the purposes of carrying out the objects only and not for any other purpose. I am paraphrasing now but that was fundamentally what was being said.

Also there was a discussion over the phrase, "not inconsistent with," and I believe it was submitted to us at that time that it should be turned around the other way so it would read, "shall be consistent with." So that we have, in fact, heard the substance of your submission.

Mr. Burke: This, of course, I could not know.

Mr. J. A. Taylor: I am not criticizing you for that. What I am really saying, I suppose, is that what you are doing is reinforcing the opinion and submission made to us by the Canadian Society for Professional Engineers.

Mr. Burke: I am delighted that other people have the same concern.

Mr. J. A. Taylor: During that discussion, I believe there was some feeling on the part of the ministry that the expressed intention of the legislation was to make it wider than may be necessary to carry out the objects of the legislation. At least that was the impression I had.

I did not know and it is not clear at this point whether there are any proposed amendments in regard to these sections. Presumably we will be getting a copy of the proposed amendments in due course.

Mr. MacQuarrie: I would like to thank Professor Burke for bringing this matter to our attention. As Mr. Taylor has

pointed out, the Canadian Association of Consulting Engineers has made a somewhat similar submission. It was indicated to them and I will indicate to you, sir, that your comments and observations will be taken into consideration by the ministry. I am giving no assurance at this time that any amendments will be made or forthcoming as a result, but I can assure you that your comments will certainly be taken into consideration.

Mr. Gillies: Mr. Taylor raised both of the points I intended to raise.

Mr. Renwick: I think the submission deserves a somewhat more in-depth comment about the matter.

First of all, there is no doubt from the point of view of a member of the public, the professional engineer or the nonprofessional engineer, that when you read section 50 of the bill which is before us it is very clumsy. I am indebted to Professor Burke for bringing the clumsiness of that situation to the attention of everyone. It is meaningless, for practical purposes, unless one has two or three hours to make the interconnections between the ancient Corporations Act, which no longer governs business corporations but is the remnant part of corporate law in Ontario.

I need only make one reference. Section 50 says, "The Corporations Act does not apply in respect of the association except for the following sections of that act which shall apply with necessary modifications in respect of the association:

"3. Subsection 95(1) (which relates to the auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include:

"i. The exception as provided in subsection 95(2); and

"ii. The reference to an affiliated company."

To my mind, that is the acme of legal gobbledegook with respect to clumsiness of interpretation. That is not a criticism of those who had to draft the act. That is the failure of the government to continue the life of the select committee on corporation law so that it could complete the work with respect to the Corporations Act. It is necessitated because we do not have a statutory Corporations Act which will say that every corporation incorporated by statute, such as this organization, will have these powers so that there will be a ready reference to it. That is something devoutly to be desired for purposes of statutory corporations. I appreciate Professor Burke bringing that to our attention.

The second point is that the gobbledegook about "natural person," "not inconsistent with" and "for the purpose of carrying out the objects of the association" is there for a very designed purpose. That designed purpose is to allow the Association of Professional Engineers of Ontario to continue its self-interest operations as if it were designed solely to advance the interest of its members, while placing on top of it the obligation to serve

the public interest. That is directly contrary to McRuer and directly contrary to all modern interpretations of professional--

Mr. Burke: And contrary to the minister on November 17.

Mr. Renwick: Of course. I consider the minister's statements in the same category as Holy Writ. They are there for the edification of persons but not to interfere at all with what they do in the practical, day-to-day living of the world.

Mr. Burke: That is why I went to its origin, because I think that is what one can actually interpret.

9:10 p.m.

Mr. Renwick: Yes. All I want to say is that I admire you for bringing these things to our attention. I equally admire the parliamentary assistant to the Attorney General, because there will not be any changes in these sections.

The legal gobbledegook is there to hide the fact we are having a self-governing professional body which has, as an equal component of its responsibility to the public, an obligation to serve the particular interests of its members. Those two are so contradictory that the only way they could be brought in focus in a bill is to use the incomprehensible language of corporate theory.

One could write a book on the origin of a statement such as, "For the purpose of carrying out its objects, the association has the capacity and the powers of a natural person." Most of us spent a good portion of our time in law school, in corporate law, learning the subtleties of the distinctions that were involved in that.

All I am saying is they are there for very advised purposes. Those purposes are to perpetuate the contradiction that this organization does two things: It serves the public interest and it serves the private interests of the members, each of them legitimate but totally contradictory and not to be contained in the same statute. We will never be able to convince the government to make that change in the bill, but I do appreciate the effort and the time you have taken to bring these matters forcibly to our attention.

Mr. J. A. Taylor: You sound like a defeatist. You should not be a defeatist, Jim.

Mr. Renwick: No, I am not.

Mr. J. A. Taylor: What you are saying is perfectly logical. I would not think this statute was intended to enlarge the ambit of authority of the professional engineers' self-policing and self-regulating association. I would think it would be to delineate and define, to ensure that just those powers necessary to carry out those objects would be manifested in this piece of legislation. Otherwise, the association lends itself to criticism because it might tend to erode the objectivity that

surely must be intended to flow from a piece of legislation such as this.

Mr. Renwick: I think you and I should write a book about this.

Mr. J. A. Taylor: I would assume what you say has been listened to carefully by the Attorney General.

Mr. Renwick: I am not a defeatist. I am an eternal optimist.

Mr. J. A. Taylor: I would not be surprised if there might be some amendments coming forward.

Mr. Chairman: I wonder, if you both wrote the book, whether you would make any money out of it, but that is something else.

Mr. Renwick: We could sell it to each other.

Mr. Chairman: Professor Burke, thank you again for appearing and for your interest. We know you have been with us all day.

Mr. Burke: If I may spend one sentence on the interaction between Mr. Renwick and Mr. Taylor, I have given the major part of 25 years to help divest the profession of things that do not belong to it. Mr. Renwick made me exceedingly pessimistic that I had wasted all that time; Mr. Taylor gave me a small ray of hope.

Mr. J. A. Taylor: Hope springs eternal.

Mr. Burke: I was wondering if I will have to wait for another 25 years for the next revision or if you can be prevailed upon to do it this time.

RETAIL COUNCIL OF CANADA

Mr. Chairman: The next witness is the Retail Council of Canada. Representing it is Mr. Alasdair McKichan, the president. You may begin whenever you so wish.

Mr. McKichan: Mr. Chairman, I believe copies of my notes are being distributed.

The Retail Council of Canada is pleased to have this opportunity to appear before the committee. As some members of the committee may know, we represent retailers who, among them, perform some 65 per cent of total retail store business in Canada, and a somewhat larger percentage within Ontario. Affiliated with the Retail Council of Canada are many of the specialist and regional retail associations. Our member companies occupy retail space as tenants and/or proprietors. They have ongoing needs to equip the space they occupy for retail purposes and have been in the habit of using various combinations of architects, engineers and store designers to achieve this purpose.

Our interest in the legislation now being discussed, and our comments on the bill for architects, which apply mutatis mutandis to the bill for engineers, are to attempt to ensure that management of the design process is not inhibited and economies of present arrangements are not diminished while, on the other hand, public safety and other considerations are preserved as a result of the prerogatives accorded under the new legislation.

It has been the practice of many retailers to utilize store designers as their lead advisers in the modelling or remodelling of retail selling space. The designing of retail space has become more and more a specialty, involving as it does a comprehensive understanding of traffic flow, visual merchandising, store operational requirements, marketing knowledge, psychology, as well as planning and the aesthetic elements of design.

Many retailers have concluded that specialist store designers can offer them the most comprehensive and experienced range of such abilities. In parenthesis, there are not many in the other professions who have that unique range of interests and specialties. Often strong and continuing relationships have built up between particular retail firms and particular design consultants. Where engineering or architectural expertise and knowledge is required, it has been the practice in many cases for consultants to retain such professionals in an advisory capacity and to rely on them to provide the advice that is necessary for particular architectural or engineering functions.

The system now in use appears to work satisfactorily and certainly provides efficient service as far as retail clients are concerned. In the designing and equipping of retail space, as you will understand, time is often of the essence. In high traffic locations, substantial rents require that retailers limit to the greatest extent the amount of time during which their stores are nonproductive. Easy and immediate access to a designer facilitates the rapid planning and completion of work.

We are not aware of any difficulty or hazard presented by the present system. Where the structural integrity or safety of a building is involved, it is the practice of retail clients, designers and those public employees responsible for approving plans to require that the appropriate professional certification be achieved.

We understand the effect of part of the new legislation will be to limit the store designer to performing services on his own account to space under the equivalent of 6,400 square feet or 600 square metres, and within this category to permit such operations only when the job does not involve penetration of a masonry fire wall or changes in common services shared with other occupiers of a larger building. Such provisions, it seems to members of this industry, are unduly restrictive if, as we believe, the current practice operates well and has not created public difficulty or inconvenience or, I would add, any hazard.

Our recommendation is that the legislation be amended so that the status quo in relation to the situation of professional store designers is maintained, if necessary, clarifying the

obligation for them to retain engineering or architectural services where such are a concomitant part of ensuring the integrity or safety of a building.

All of which, Mr. Chairman, is respectfully submitted.

Mr. Chairman: Thank you, Mr. McKichan. I believe Mr. Fram has a comment to make.

9:20 p.m.

Mr. Fram: I think your impression is wrong. We have had discussions essentially about this issue this afternoon. In terms of the issue that remains, it really relates to the nature of safety services and who offers those services in assembly or institutional buildings or those buildings that require, in terms of the architect-engineer relationship, the involvement of both professions. Apart from those safety features, nothing in either bill will affect the work of store designers.

Mr. McKichan: Mr. Chairman, I guess our concern was that the bills together would in essence inhibit the use of a store designer as the lead consultant in any situation where there was any major attachment or breach of a bearing wall or other substantial part of the building. If you assure me that is not--

Mr. Fram: That is not the case. They can still be prime consultants, as they have been in the past.

Mr. McKichan: If I may continue, if it is the intent that the consultants can still retain professional advice when necessary, it seems to me that assuages most of our concerns.

Mr. J. A. Taylor: Both an engineer and an architect, though.

Mr. Gillies: Depending on the size.

Mr. Fram: That is the situation we were discussing this afternoon. The provision of the architect-engineer agreement as embodied in these rules between an architect and an engineer, relates to who does the safety-related aspects which a professional has to do. Indeed, the practical answer is there will be many joint practice firms, even under this bill, and there will only be a need to retain one professional.

We are still exploring methods to see if there are any ways of simplifying that answer, without totally destroying the effect of these years of work in terms of the interrelationship between the professions. That is again only in terms of who does the safety feature or the safety features, the structural problems and other safety issues required. That has nothing to do with who can be prime consultant and the other nonsafety-related designs of equipment, fixtures, nonload-bearing walls and all of the other necessary things in retail sales.

Mr. McKichan: I guess our members were apprehensive that the legislation would oblige the hiring of two professionals when

in the past one performed the task completely adequately, and, it appears, without any hazard to public safety. We were also apprehensive that the particular professional conduct of either profession might strike at the developer, the developer being in the lead position and only agreeing to work for that individual or that firm if he was in a subservient position.

Mr. Fram: Once again, we received assurance from the architects today that no such rules were contemplated and none exists.

Mr. McKichan: If all of these considerations are met, the concerns of my members are met.

Mr. Chairman: Thank you, Mr. McKichan. We will now turn to Mr. Gillies.

Mr. MacQuarrie: I might say, Mr. McKichan, as Mr. Fram has suggested, one aspect of the situation is being actively considered by the ministry.

Mr. Gillies: Mr. McKichan, I think my comments and questions were largely pre-empted by Mr. Fram and by the parliamentary assistant. I just encourage you to get hold of this afternoon's Hansard and read the discussion we had when the Association of Canadian Industrial Designers of Ontario was here.

I suspect your point is won. I do not think the status quo for the retailers and their relationship with the industrial designers is going to change. However, what was very interesting to me this afternoon was that everybody was saying the status quo was going to remain, but there was very little agreement as to what the status quo was.

I suspect that, aspersions and prejudice to nobody, a lot of the work done under the particular arrangements we have discussed was being done outside the old act and will continue to be done outside the new act. But if it works, do it.

Mr. McKichan: I guess our concern in this situation is economy and efficiency, and if that is going to be equally met by the new legislation, our members are satisfied.

Mr. Renwick: Mr. McKichan, I really appreciate the concise accuracy of the presentation you have made because it mirrors the very practical problems we have attempted at least to discuss and unravel this afternoon.

I think the members of the committee appreciated this afternoon the content of your sentence, "It has been the practice of many retailers to utilize store designers as their lead advertisers in the modelling or remodelling of retail selling space." I think the message got through that this is a significant and important industry.

The second message that got through was on page 3:

"We are not aware of any difficulty or hazard which is

presented by the present system. Where the structural integrity or safety of a building is involved, it is, as mentioned, the practice of retail clients, designers and those public employees responsible for approving plans to require that the appropriate professional certification be achieved."

I think that is an extremely accurate assessment. The problem relates to the extent to which the economies of the operation will be affected by the degree to which one or more professions are involved in it, and that is the key to the problem, as we understood it.

Then there is this additional problem with the exemption with respect to the 6,400 square feet. We understand that, if you are operating entirely within that confined space, no one has to consult within or without with any other profession, but there is freedom to do so. The question that is still very unclear in the act is, even if you fall within that exemption, what happens to you if you have to, as you state, carry out operations within this category when the job involves "penetration of a masonry firewall or changes in common services shared with other occupiers of a larger building." That point is not covered anywhere in the act, and I think it vitiates to a large extent the 6,400 square feet exemption so far as I can understand the problem.

I thought the basic point--and you have said it much more politely than I tried to say it this afternoon--was that if we are not careful, we will be putting this industry out of business.

You said at the top of page 2 that your interest in the legislation is to attempt to ensure that "management of the design process is not inhibited and economies of present arrangements are not diminished while public safety and other considerations are preserved." I think this is a superb statement of the very practical problems, to which legislation must bend rather than the other way, that the business has to bend to the legislation, because we will simply be putting people and a business out of work.

It is a serious problem. We will be very interested in it. I am not as sanguine as the government's spokesmen are that the problems have been or can be solved. I think we are going to have real problems in the first week in March when they come to look at the solutions. I certainly hope the government, when it consults, would consult not only with the particular industry that is involved in these concerns in the professional organizations, but would consult with the retail council on this issue because of the excellence of the presentation.

Mr. Chairman: There being no further questions for Mr. McKichan, on behalf of the committee I would like to thank him for appearing and presenting his brief. That brings us to the conclusion of this evening sitting.

Mr. Renwick: So early?

Mr. Chairman: Yes, and we will adjourn now until tomorrow morning at 10 a.m.

The committee adjourned at 9:31 p.m.

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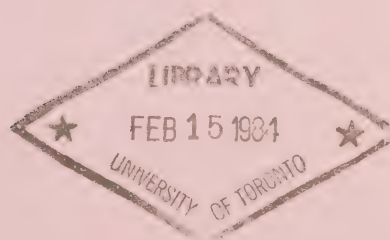
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 7, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk pro tem: Richardson, A.

From the Ministry of Consumer and Commercial Relations:

Cooper, R. G., Deputy Superintendent, Legal and Investigation
Branch of Insurance, and Assistant Registrar

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 7, 1984

The committee met at 10:04 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

The Vice-Chairman: I recognize a quorum.

I should inform the committee, ladies and gentlemen, that the chairman is away this week. His wife had some elective surgery and he is away with his wife. As vice-chairman, I will be sitting in for him for this week.

At the request of the Liberal opposition, this week is to be spent on a total review of the white paper on the loan and trust corporations legislation. The committee will recall that we are sitting from 10 a.m. to 12:30 p.m., and between 2 p.m. and 4:30 p.m. Tomorrow we are sitting only between 10 a.m. and 12:30 p.m.

Having made those few comments, I will ask--

Mr. Breithaupt: Just one point, Mr. Chairman, I felt I should immediately upon the beginning of the hearings remind the members of the committee that I happen to be a director of a trust company, Income Trust Co., which is a federally chartered company with its head office in Hamilton. I thought it prudent once again as we go through these matters to remind you all of that so there is no question raised as to any difficulties that might otherwise accrue.

The Vice-Chairman: Thank you, Mr. Breithaupt.

Having drawn those few comments to the committee's attention and Mr. Breithaupt having made his, perhaps the minister would care to proceed.

Hon. Mr. Elgie: Mr. Chairman, if I could have the lights on for a minute. This is not a Treasury spectacle, you know, you can relax.

If I could ask the indulgence of the committee, I might make a comment before I get to my introductory remarks.

You will recall that one of the major proposals in the white paper was the appointment of an assistant deputy minister to be in charge of all financial institutions within the ministry. I am pleased to announce to the committee that George McIntyre, who has been the assistant deputy minister in Treasury in charge of finance, and comptroller, is now on board with respect to that position and he is sitting with us today.

George brings an extensive background in economics. As well,

he is a chartered accountant. He has had extensive experience in the business community and was for a period of time a member of and president of the Ontario Institute of Chartered Accountants. We are very pleased that someone of the calibre and quality of George McIntyre has joined us as assistant deputy minister in charge of financial institutions.

Mr. Chairman, it is my understanding of the procedure--from Mr. Breithaupt, I believe it was--that when this committee met in the late fall, it wished to follow a week in which they would be briefed on the present Loan and Trust Corporations Act and how it would be affected by the proposals in the white paper on loan and trust corporations legislation and administration in Ontario.

To provide the committee with this background information, I have asked my deputy minister and staff to prepare a presentation for the committee which will be done with the assistance of a series of slides.

In preparing this material, some assumptions had to be made about content and about how the information would be most usefully presented to the committee. With respect to content, the presentation will include a historical review of the loan and trust industry in Ontario, including reference to those legislative features that are of significance to the committee's work.

The review will then deal with the provisions of the present Loan and Trust Corporations Act, as it exists today. The proposals of the white paper will then be related to these provisions and, where appropriate, to the recommendations of the 1975 report of the select committee on company law on loan and trust corporations and to the amendments that were made in December 1982.

Perhaps this is an appropriate time to comment on what I intend to do with respect to the recommendations of the 1975 report. As noted on page 4 of the white paper:

"The 1975 report of the select committee on company law on loan and trust corporations was also a valuable source of views and recommendations in the preparation of this paper and will be of particular importance in the preparation of legislation following consideration of this paper. That report was prepared before the onset of the unique economic and financial conditions of the 1979-82 period. It was thus not responsive to the problems which emerged during that period, nor to the abuses which were discovered and which require significant changes in legislation and administration."

It is therefore my intention to deal with the recommendations of the 1975 report in the course of drafting the amendments to the Loan and Trust Corporations Act. In view of the fact that the raised legislation will almost certainly be referred to this or some other committee of the Legislature, my staff have proceeded on the assumption that, generally speaking, it would be more appropriate to deal with any issues arising out of the 1975 report that are not directly related to the recommendations of the white paper at the time when that new legislation is reviewed.

I would like to emphasize to committee members that the purpose of this overview is to give the committee a perspective to assist it in evaluating the submissions to be made in the following weeks by various witnesses appearing before the committee and in evaluating the proposals of the white paper.

10:10 a.m.

It will not be the purpose of this presentation to provide an immediate opportunity for debate on the merits of any of the proposals. In fact, I would ask that committee members, if they agree, restrict their questions to matters requiring clarification the particular issues at a later time.

Obviously, we wish members to understand fully the matters being explained, but if we get into discussion on the merits of proposals at an early stage we may quickly run out of time, particularly the time we have set aside for the overview.

If there is any material we can reasonably make available to the committee that any of the members are aware of and that we may have overlooked, please let me know and we will do our best to provide it.

In closing I would like to make one final observation. Much of the material we will be presenting is readily available in various documents previously distributed to the committee members. For those of you who served on the 1975 select committee or who have been able to find time to study the material, much of the presentation might seem unoriginal. We do not apologize for that, as it is our intention to reinforce and explain material previously distributed. It is not our intention to confuse the committee by a novel presentation that presents the same facts in entirely different settings.

With your permission, Mr. Chairman, unless there are questions about what I have said so far, I will ask the deputy to commence the presentation.

Mr. Crosbie: Mr. Chairman, I would like to start off these briefings this morning with a basic overview of the loan and trust industry in Ontario and across Canada. As the minister indicated, we will be using some slides to illustrate some of the information we will be putting before you.

You will be hearing and seeing quite a few numbers. None of them is critically important in itself but, taken as a whole, we think they paint an impressive picture of an industry that is probably much larger and more important to the financial fabric of this country than some people may realize. Most of the figures and statistics used here are from the Canada Department of Insurance and the Trust Companies Association of Canada.

In 1982, Canada's 77 deposit-taking trust companies administered more than \$88.8 billion worth of assets, trusts and agency funds, and a further \$37.7 billion was held in guaranteed certificates and term deposits. Currently 54 trust companies and 34 loan corporations are registered to do business in Ontario, and

17 of the trust companies and eight of the loan corporations are actually incorporated in the province.

Those trust companies operating here have taken in more than \$34 billion from the public in the form of deposits and guaranteed investment certificates. Out of that, Ontario-incorporated trust companies administered deposits of almost \$7.8 billion by the end of 1981, or almost 22 per cent of all the guaranteed deposits and certificates under the control of trust companies in Canada in that year.

The steady growth of trust companies in Canada over the last decade can easily be seen in this slide showing guaranteed funds as well as estate, trust and agency funds between 1973 and 1982. Deposits and guaranteed certificates have grown more than fourfold in the 10-year period, while estate, trust and agency funds under administration almost tripled.

The next slide shows the growth pattern as seen in Ontario trust companies, with a peak of \$7.8 billion in 1981 and a slight decline in 1982 reflecting the business recession of that year.

The next slide will show the total mortgage loans approved by Canadian trust and mortgage corporations during 1980, 1981 and 1982 as compared to the total mortgage loans approved by all Canadian lending institutions during those same years.

One of the first observations one can make about these figures is that the impact of the recent recession can be seen in the general decline in new mortgages granted across the board. It can also be said that the dominant place they held in the mortgage market in earlier years has been eroded somewhat, mainly by chartered banks. To be exact, the industry's market share of residential mortgages fell from 65 per cent in 1971 to 54 per cent in 1982. This is not to say that trust companies have done poorly. On the contrary, asset growth indicates the difference has been made up through their increased diversification in services offered.

Since the Second World War, trust companies and their related mortgage loan companies have played an increasingly important part in this country's financial marketplace. Their growth in assets has averaged more than 14 per cent per year since 1950, reflecting a growth rate of more than 20 per cent per year in the late 1950s and early 1960s, when chartered banks had difficulty responding to a strong demand for mortgage loans because of regulatory restrictions on their mortgage lending activities.

It was the removal of these restrictions in mortgage lending in the late 1960s that made banks more competitive in loans. Accordingly, the growth rate of trust company assets slowed somewhat through the course of the 1970s, but climbed again to as high as 17 per cent per year in 1977 and 1978, before levelling again to a still impressive, although more modest, level.

During the past few years, those companies specializing in long-term and fixed rate mortgages ran into some difficulty in the

face of rapidly rising interest rates. Profit margins on existing fixed rate mortgages were often eroded because these assets were not funded by term deposits and guaranteed investment certificates with corresponding interest rates, a problem commonly called mismatching.

In general, the industry responded well to inflation and changing market conditions, but an unavoidable shift developed towards both shorter mortgage terms and the introduction of floating interest rates for other types of lending. At least as far as the Ontario-based industry is concerned, companies have responded effectively to the new competitive challenges and the suddenly distorted marketplace brought about by economic upheavals. In short, the industry has weathered the storm and can be expected to continue to respond to these new factors in the immediate future.

That same storm has been felt by all other financial institutions in Canada, including banks, credit unions and insurance companies, as well as by similar institutions in other jurisdictions. In the United States, for example, there were 42 bank failures in 1982 and another 43 in the first 10 months of 1983. I would point out that those rates compare to the average of approximately 12 failures per year that had been experienced between 1934 and the late 1970s.

Although the specific reasons for each failure may vary, they demonstrate that a volatile and inflationary financial environment provides both temptations and opportunities to abandon the usual level of prudent behaviour required of financial institutions.

Here in Canada, the industry has battened down the hatches to some extent, a process that included closing or absorbing some smaller operations and reducing the number of people employed in the field. This next slide shows how the number of full-time trust company employees across the country fell to just under 26,500 in 1982, down by almost 1,900 from the previous year.

You can also see that the number of real estate sales personnel employed in the 391 real estate offices operated by trust companies fell to just over 10,000 by the end of 1982, or almost 650 fewer than in 1981.

Turning now to the area of deferred income plans and investment in common trusts under administration by members of the Trust Companies Association of Canada, we see the continuous rise in the value of registered pension plans under administration from just over \$7.2 billion in 1973 to more than \$37.5 billion in 1982. The total registered savings plan assets under administration during 1982 reached almost \$15.9 billion, compared to \$7.4 billion under administration by chartered banks that same year.

The grand total of assets under administration for all deferred income plans, including registered retirement savings plans and registered home ownership savings plans came to just over \$55.4 billion in 1982, up from just over \$43.1 billion a year earlier.

If we combine both trust company and bank assets regarding registered retirement savings plans alone, we can see the kind of enormous growth that has taken place over the last decade in this field. In the year ending March 1, 1983, more than 1.6 million new RRSPs were registered across Canada, with almost one million of them directly under trust company plans or other corporations acting through trust companies.

10:20 a.m.

Also during calendar 1982, financial institutions in Canada registered more than 219,000 new RHOSPs. Of that total, more than 50,000 were issued directly by trust companies and another 70,646 were issued by other financial institutions acting through trust companies. In other words, trust companies issued more than half the total number of registrations. It should be understood that since late 1980 amendments to the Income Tax Act have allowed chartered banks to issue RHOSPs in their own right, but only through the vehicle of a deposit account.

I do not want to go too far in putting slide after slide of comparative numbers on the screen for committee members. I think the point has already been made that trust companies are a critically important part of Canada's financial service.

The next part of our presentation is certain background concepts of loan and trust companies and an overview of the history of that industry from its early days to the present. I would like to ask Mr. Ron Cooper of the ministry to make that part of the presentation.

Are there any questions so far?

Mr. Chairman: Are there questions to this time, gentlemen, members of the committee? Mr. Cooper.

Mr. Cooper: Most of a trust company's assets and revenues derive from two basic classes of service: first, trustee and other traditional fiduciary services from which trust companies get their name, and second, financial intermediary or banking-type services.

Trust companies are the only corporate entities in Canada allowed to exercise trustee powers. It is in this trustee or fiduciary role that they manage assets arising from wills or act as trustees for pension and deferred benefit plans. They can also act as corporate trustees for bond and debenture issues and as stock transfer agents.

Revenues from the fiduciary and agency side of the business come from fees charged for services rendered. Revenues from the financial intermediary side of trust company activities derive from the difference between the rate of interest the firm can charge for loans and the rate of interest it must pay for deposits.

Trust companies attract deposits either through the sale of guaranteed investment certificates or in the form of savings and demand deposits. It is in this role that a trust company acts as

principal, very much like a chartered bank. To a major extent, the money received through deposit-taking activities is invested in residential mortgages and in other loans and securities as specified by the provincial or federal legislation.

Revenues from other financial services include commission and fees from real estate sales and management. In fact, some trust companies have become very important participants in the real estate field.

There are some basic differences between trust companies and chartered banks which should be clearly understood from the outset: (1) Banks cannot offer trust services. (2) Trust companies cannot offer commercial banking services, such as factoring. (3) Trust companies must limit their liabilities to a certain approved multiple of their capital base. (4) There is a limit on the size of a trust company's personal loan business.

(5) Banks lend to both individuals and corporations while, traditionally, trust companies lend primarily to individuals. (6) Banks are regulated exclusively by federal authorities under the Bank Act. Trust companies are regulated under the appropriate laws of the provincial or federal jurisdiction in which the company was incorporated. (7) Trust companies have no ready lender of last resort. Only chartered banks can turn to the Bank of Canada during an emergency.

The key difference, however, between what may seem to the general public as essentially similar financial institutions is the unique fiduciary or trust role granted to trust companies.

Before the advent of the trust company late in the last century, trusteeship functions were carried out by individuals such as lawyers, accountants, local agents and others with varying degrees of specialized expertise. It was the growing need for professional executors and long-term estate managers, corporate bond trustees, transfer agents, registrar receivers and liquidators that eventually led to trust company legislation in the first place.

Individual trustees established their trustworthiness and reliability through long years of proven performance in the community. Later, when the first comprehensive trust companies legislation was enacted, in our case, the Ontario Trust Companies Act of 1897, applicants for corporate registration as a trust company had to prove that their fitness to discharge their unique duties was sufficient to command the confidence of the public. They also had to demonstrate that their registration would prove to be in the public's best interests.

These first general statutes illustrate the original emphasis placed on the role of the trust company as a provider of specialized services rather than as a financial intermediary. These new corporate entities took on the role once granted solely to professional individuals. It was a heavy responsibility to shoulder in 1897 and no less today in 1984.

I would like to expand for a moment on this concept of

trust. The traditional view of English law has been that a trust is a confidence reposed in a person with respect to property of which that person, the trustee, has possession with the intent that it will be held for the benefit of another. Accordingly, a trustee has a duty to act with fidelity and diligence in all his dealings with the trust property and with the trust beneficiary.

Under this traditional view, the courts had full jurisdiction over the conduct and conscience of the trustee. Since a corporation has neither conscience nor a responsibility, at least not in the same way as does an individual, the concept of a trust company was generally resisted in the English-speaking countries well into the 19th century.

While trust companies remain the only corporate entities with such trustee powers, their charters do not confine them specifically to the trustee business alone. From this original base, they have steadily broadened their range of personal and corporate financial services, the main area of expansion being the acceptance of deposits and the granting of mortgage loans. It bears repeating that what sets trust companies apart from being just another form of bank is their exclusive corporate role in administering trust assets.

Maintaining this character and image of trustees has proven to be important even in the trust industry's financial intermediary activities. The concept of fidelity and diligence, which had always been at the core of the traditional legal view of the trustee, seems to have attached itself, at least in the public mind, to all trust company activities including their banking services.

Their special trust function has resulted in otherwise small firms having a level of prestige that has become extremely prized and accordingly has set a high standard of conduct for trust companies to observe.

It must also be emphasized that the role of trusteeship has ensured that they continue to be regulated by the provinces. There is little doubt that if they had evolved into little more than banking institutions, trust companies would likely be included under the federal Bank Act for the simple reason that banking was an area of legislation reserved for the federal government under the British North America Act. Trust legislation, on the other hand, is legislation in respect of property and civil rights and is an area of provincial responsibility under the British North America Act.

To place these remarks in some context, it would be useful to briefly review the history of the trust and loan industry in Ontario from its beginnings in the last century through to the current white paper. To do this, I have drawn heavily from the historical overview contained in the 1975 report on loan and trust corporations by the select committee on company law.

Corporate trustees were first permitted in this province in 1872 when the Toronto General Trust Co. was incorporated by a special act of the Ontario Legislature. Even so, the company did

not begin actual operations until a full decade later, in the same year that the Legislature amended the Joint Stock Companies Letters Patent Act to make specific provision for incorporation of trust companies. Nine years after that, in 1891, trust companies were authorized to act alone as trustees in High Court matters.

10:30 a.m.

The Ontario Trust Companies Act of 1897 represented the first legislative effort to create a comprehensive trust company statute. It was under this 1897 law that applicants for incorporation by letters patent had to first prove their fitness to do the job and to command the confidence of the general public.

No provision was made in any of the legislation to allow trust companies to accept deposits, and the issue of debentures was forbidden. The regulatory system was simple, allowing the High Court to investigate the affairs of trust companies when deemed necessary. The paid-up capital stock had to be \$100,000 before letters patent could be issued.

It is interesting to note that at this point, almost a century ago, legislators were concerned with many of the same issues that affect us today: the decision-making discretion to be exercised upon incorporation, the protection of clients through adequate capitalization, concerns about borrowing and investment powers and the manner of industry regulation.

Before I jump ahead another 15 years to passage of the combined Loan and Trust Corporations Act, I should point out that the historical basis for loan company legislation dates back even further than that of trust companies. In their earliest form what we now call loan corporations were called building societies. They were developed in the latter part of the 18th century in Britain to allow members to accumulate capital for the purchase of housing.

In 1846 the Building Societies Act was passed to provide for the establishment of building societies in Canada west, otherwise now known as Ontario. These societies raised money through the sale of shares on a monthly instalment basis to their own members. The funds raised were to be used for the sole purpose of enabling members to receive amounts up to the value of their shares in order to buy or build a house or other real property. The money lent to a member, to a maximum of the value of shares held, was secured by a mortgage on the property.

The early societies were intended to be temporary self-liquidating organizations, but in practice they tended to add new members as the needs of the original members were met. The first evolution of a permanent society occurred in 1855, when the Farmers and Mechanics Building Society amalgamated with the Toronto Building Society to form the Canada Permanent Building and Savings Society, the forerunner of Canada Permanent Mortgage Corp.

Statutory recognition of the societies followed with passage of the Building Societies Act of 1859. Within a relatively short period of time these simple artisan societies had evolved into professional, permanent financial institutions. The Permanent

Building Societies Act in 1875 for the first time allowed societies to lend money to nonmembers to purchase mortgages and to invest in government securities. It also permitted societies to borrow money through the issuance of debentures. At the same time the 1875 legislation provided for the first regulatory authority over the lending institutions by granting power to the provincial Treasurer to stay the conduct of a society's business in the event of improper management.

The Loan Companies Act followed in 1891 in an attempt to regulate all other forms of loan-making institutions. In 1897 the Loan Corporations Act consolidated the law regarding loan companies and building societies and repealed the earlier legislation. This was the period when the relative importance of loan corporations as Canadian financial institutions reached its highest level. During the 1890s loan corporations succeeded in acquiring 24 per cent of all assets administered by financial intermediaries in Canada.

For the next 50 years loan companies went into steady decline until by 1944, the lowest point in their history, they controlled only two per cent of the market. The reasons for this decline are complex, but are related mainly to their practice of raising capital through the sale of debentures in Great Britain rather than in Canada. The First World War and differing interest rates on opposite sides of the Atlantic tended to dry up this source of funding, and by the time the industry began to focus on native depositors and debenture buyers, other financial institutions had moved up and were already competing for the available funds in the local market.

As I indicated earlier, the Ontario Trust Companies Act and the Loan Corporations Act were both repealed in 1912 and replaced with the Loan and Trust Corporations Act. This merging of the two acts came in recognition of the fact that trust companies were broadening their activities beyond the simple provision of trustee services and, like loan companies, had entered into the field of financial intermediation.

The new statute permanently established the conceptual basis for the trust company's role in our current financial system. Although trust companies were still prohibited from borrowing money by taking in deposits or issuing debentures, they were authorized to accept money as trustees for investment. In 1921 an amendment to the act permitted them to accept deposits for investment as trust funds. This was extended to allow trust companies to guarantee repayment of the moneys received and to guarantee payment of a fixed rate of interest on those funds. It also allowed them to retain any interest earned by the company above the agreed rate.

With this expansion of the traditional concept of trusteeship, the path was open for trust companies to pursue their alternative function as financial intermediaries. Trusteeship services have continued to expand since the close of the last century, a trend accelerated by Canadian industry adopting public financing as a source of funds, a move which carried with it an ever-increasing need for the services of corporate trustees for bond issues, stock transfer agencies and so.

More recently, the concept of the trustee as a supplier of services has been enlarged even further with trust company expansion into specialized areas such as real estate. Even more impressive was the increase in financial intermediation services offered by trust companies. As company funds and guaranteed funds increased, trust companies faced the problem of choosing investments, particularly ones which would match funds accepted on a demand or short-term basis. Such secure, short-term investments were prescribed within provisions of the act.

Longer-term deposits have been generally matched with more fixed investments, mostly in the mortgage field. It is easier to understand why trust companies became the principal source of residential mortgage funds among private lenders. The traditional trustee concept has proved to be flexible enough to enable trust companies to provide further services, such as those of the pension trustee, investment fund trustee, and trustee of registered retirement savings plans and registered home ownership savings plans.

The trust company of today usually stresses the provision of a wide range of loan services and investment facilities for consumers, a development that has been enhanced by the establishment of branch office networks on a regional, provincial or country-wide basis. The original Loan and Trust Corporations Act of 1912 has been amended by the Legislature many times over the years, but from the outset it is important to understand that it remains both an incorporation and a registration statute.

Mr. T. P. Reid: I have two questions, Mr. Cooper. In your delineation at the beginning on the difference between loan and trust companies and banks, you did not mention the way the corporation was held and the problem at the bank level that only 10 per cent of the shares can be held by any one group or individual. Part of the current problem we have is that a loan and trust company can be controlled by one individual. Is there any reason for your leaving out that difference?

Mr. Cooper: No. The intention of this overview was to give you some insight as to how trust companies have developed. The issue you have discussed will come up later in the day and certainly over the following weeks. That was the simple reason for it.

Mr. Crosbie: I can comment further on that. The list of differences enumerated dealt with services rather than with the organizational structure. Once you get into the organizational structure, there are quite significant differences between the two types of organization.

10:40 a.m.

Mr. T. P. Reid: I have one further question. We went through this in another committee last week. As I understand what you have told us, basically the loan and trust companies have grown up to service a need that was not otherwise being serviced by the banks because of legislation or the fact the banks did not want to do it. That is why they have grown in the way they have

and expanded into some of the other services industries that were being provided by banks.

Mr. Cooper: That is right. With the trust companies, the fiduciary is--

Mr. T. P. Reid: Named exclusively.

Mr. Cooper: Yes.

Mr. Cassidy: You mentioned the concept of fidelity and diligence did seem to be attached from the beginning in the public mind, but I am not sure whether you can bring that up to date. Are there any legal or administrative thoughts about what that means today, and whether that is a fiction in the public mind or whether it is appropriate for that kind of expectation to be attached, not only to the trust operations of trust companies but also to their operations as near banks?

Mr. Cooper: That terminology and concept came from the trust and fiduciary aspect of the business they have undertaken. I do not think it is wrong for that to carry forward even today. In terms of the way the statute is structured, when a trust company receives deposits or debentures, that money is held with a statutory form of trust. I believe that concept carries forward today.

Mr. Crosbie: I would agree the concept has carried forward. One of the concepts that causes us considerable concern, which arises out of the fact that trust companies have been licensed to carry on business, is that when it is registered as a trust company, it is not required to provide trust services. It can be carrying on basically as a loan company, but the public is going in to deal with a trust company. In the white paper you will see comments to the effect that we feel there is a necessity to ensure that people trading under that aura of a trust company name, with all the diligence and fidelity that is inherent in it, must conduct all their operations to a high standard.

Obviously, there are certain legal principles that apply to a trustee that do not apply to the nontrust operations, but we are concerned about the capacity of a person to be drawn into a trust company because of some concept of that kind, who is then sold a different type of financial instrument that may not be subject to the Canada Deposit Insurance Corp. guarantee, for example. There are issues of that kind which have to be addressed.

Mr. Cassidy: Has an analysis of the number of Ontario trust companies which do not offer trust services been prepared? Will we see that later?

Mr. Crosbie: No. We do not have it in terms of how many do not provide trust services because a lot of them may provide a minimal number such as registered retirement savings plans and that type of service. That is technically a trust area, or can be.

Mr. Cassidy: I had another similar question. As I understand it, the Loan and Trust Corporations Act puts less

obligation of diligence on the directors of the company than that which now exists under the Business Corporations Act with respect to corporations in the province generally. Is that correct?

Mr. Crosbie: The Business Corporations Act was amended--Mr. Cooper is an expert in this area--a couple of years ago. The standards on the directors were changed. It would be the intent in the revision of this act to look at that issue.

Mr. Cassidy: Prior to that, if there was any remarkable difference between the required standard for directors of trust companies and that of corporations generally, it was even prior to the Business Corporations Act--the Loan and Trust Corporations Act was somewhat weaker rather than stronger. It is definitely weaker now because of the Business Corporations Act. Is that correct?

Mr. Crosbie: You have to look at the law of trust before you answer that question, whether the directors of a trust company in law would not have a heavier onus placed upon them because of their trustee relationship. It was not necessarily spelled out in the act.

Mr. Cassidy: I am just asking whether we will get some analysis of that or perhaps some of the material, or has it been for a long time that the trust obligation--

Mr. Crosbie: We could review that and have that prepared for you.

Mr. Cassidy: --which Mr. Cooper spoke about, although it existed in the public mind, was not responded to by any corresponding legal obligation either in the law of trust or in the law passed by the Legislature which laid down any special duties on trust company operations?

Mr. Thompson: Mr. Cassidy, the point is that the Loan and Trust Corporations Act does not have a statutory provision whereas the Business Corporations Act does. As part of our deliberations, we would propose that a statutory duty be advanced on it.

The reliance has been on the common law obligation of trust, particularly on the directors and particularly in the administration of estates where they are subject to the purview of the surrogate court, which over the years has affixed responsibility on trustees. We think the time has come to share your view that it is time to put this in the statute and create a special form of duty for directors.

Mr. Cassidy: If I am correct, what I am saying is that even prior to the amendments to the Business Corporations Act, or the passage of that act, there were statutory duties on directors laid out in the companies act or whatever it was called in Ontario, whereas there were no statutory duties laid upon directors of trust companies in the Loan and Trust Corporations Act. Is that correct?

Mr. Thompson: The act did not expressly have a standard, but there was a common law standard.

Mr. Cassidy: But the common law standard would apply to operations when people were working in a fiduciary capacity.

Mr. Thompson: Yes.

Mr. Cassidy: What proportion of the activity of trust companies, or (inaudible) trust companies came from activities that were nonfiduciary?

Mr. Thompson: Going back to your original question, this is something I think is very important, the question of the trust concept. Under the federal proposals for amendment to the Loan and Trust Corporations Act they intended to take away this trust responsibility, if we can call it such, over the banking or intermediary business of the trust company and leave it on a debtor and creditor relationship in the same manner the banks have.

In our examination of the white paper, we did not accept that view and felt the trust concept was better. I think it follows from that that if we are maintaining the position there is a trust relationship, we should follow along through with an expressed statutory definition of what the duties of directors are in administering that trust.

Mr. Cassidy: What I am driving at is this: The deputy minister, Mr. Crosbie, has said that under the conditions of the early 1980s, which were volatile and those kinds of things, to some extent there was both opportunity and temptation to play games by people running trust companies--the directors of trust companies or the people in charge.

Those games basically were played not in the trust area but in the nontrust operations. What I think I am hearing is that, although there was ample time to have done something about this, in fact there were neither statutory nor common law real restrictions on what those directors did when they acted in an untrustworthy type of way with inflation of mortgages, mortgage evaluations and other things like that which, by any conventional standards, was playing pretty fast and loose with people's money.

Mr. Crosbie: Mr. Cassidy, I was not trying to avoid your question when I hesitated in answering it directly. I think I can agree with you there is not the same specific definition. As Mr. Thompson has said, we do not have a definition of the standard conduct of directors in the Loan and Trust Corporations Act as we have in the new Business Corporations Act. The point I was trying to make--

Mr. Cassidy: Or in the old act.

10:50 a.m.

Mr. Crosbie: No, but in the old act it is not accurate to say there are no obligations or standards set on the directors. The act is full of provisions that relate to borrowing and lending

relationships and reporting requirements that affect the directors, but not specifically in terms of a precise section saying, "This is the standard of conduct for directors," or "Here is the standard." I agree with you on that point. I just did not want to concede that there is nothing in the act governing the directors.

Mr. Cassidy: But the problem with the adherence to regulations is a bit like telling my kid to get in by midnight, so he comes in by midnight and goes out the back door and stays out for another two hours. He has adhered to the regulation but not to the spirit of it.

Hon. Mr. Elgie: We are not here to discuss you as a parent, Michael.

Mr. Cassidy: You see the point I am making.

Mr. Crosbie: Yes.

Mr. Cassidy: It seems to me, therefore, that the trust concept was not put in a way that when these fast operators came along you could nail them with it because, in fact, even in the common law it did not give Mr. Thompson and his people any real equipment to go and say: "God damn it, I do not care what you say in terms of the technicalities. This is not the way a trust company operates."

Mr. Thompson: Oh, I think we said that, Michael.

Mr. Crosbie: I think you must recognize, too, that when a trust company receives deposits it receives them in trust. So when you made the comment earlier that the activities or irregularities did not take place in the trust area, I agree if you mean the estates trusts and agency matters, but all the assets of a trust company are taken in as trusts.

Mr. Breithaupt: I would just reinforce the theme that Mr. Cassidy has raised. Certainly, in many of the trust corporations that are incorporated under Ontario law particularly, several persons will have a large and substantial interest or investment in the number of shares and there will be other members of the board of directors who will likely have a more nominal interest. It would be most worth while if the duties and expectations of directors were highlighted statutorially so that a new person becoming a director of a company would have the opportunity to refresh himself or herself as to just what is expected.

In the absence of that approach, there could be a tendency that might well occur that the two or three persons having a large financial interest would, in effect, run the operation and the board of directors would be a much more nominal kind of commitment and a rubber-stamp sort of approach that may have led to the attitudes and backgrounds which have allowed some of the problems that have brought us all here today to attempt to resolve.

Where directors can be readily appointed without a

particular financial stake in an institution and where a board or executive committees of that board meet rarely, then the difficulties and opportunities for problems and some of the activities that have led to all this have a greater opportunity to occur.

I would encourage setting out in a somewhat more particular manner the expectations of directors' responsibilities within the statute. It may well be that our federal friends may choose to use the same kind of pattern. If they do so that will be just fine, but even if they do not, someone becoming a director of a federal company will at least have another opportunity to see the kinds of things that are expected for a company that operates within Ontario, whether it is incorporated in Ontario or not. I think it will be a healthy step and I think Mr. Cassidy is completely on the right track there.

The Vice-Chairman: Let it be seen that the minister and the deputy are somewhat shaking their heads in unison.

Hon. Mr. Elgie: Oh, no, we agree.

Mr. Gillies: Just following on Mr. Breithaupt's point, I wonder if there might be any helpful comparisons that the ministry could dredge up for us in terms of, say, the responsibilities delineated for the directors of a British building society or trust officers in other jurisdictions. I think that might be helpful for us to look at.

Hon. Mr. Elgie: Of course, they are in the midst of a massive overhaul in the United Kingdom following some problems.

The Vice-Chairman: It has been indicated, Mr. Gillies, that as much as can be provided certainly will be provided by the ministry and its staff.

Hon. Mr. Elgie: There is a recent headline about the building societies in Britain.

Mr. Crosbie: After a four-year investigation they took over one of the largest building societies in London.

Hon. Mr. Elgie: "Took possession and control," I think the phrase is.

Mr. Gillies: Perhaps we should send them our criteria.

Mr. Breithaupt: It may be necessary.

Hon. Mr. Elgie: Yes, it may be.

Mr. Crosbie: The committee should investigate it.

This brings me to the point in our review where it is appropriate to look at the existing provisions of the Loan and Trust Corporations Act. Having been asked to provide an overview of this act to the committee, we were faced with some difficulties. Not the least of these is the fact that the act is

139 printed pages in length, and that does not include the regulations. Many of those pages are written in very complex language.

We considered the advisability of following the format of the 1975 select committee report, but concluded that it would further complicate the presentation if as part of this introductory overview we involved the committee in a reconsideration of the recommendations of that report.

On this basis we have prepared an outline of the act that provides an overview as the act is written at present, with the intent that the overview will assist the members in putting other comments and presentations they will be hearing into a context related to the existing act. We realize that in taking this route we will be presenting a considerable amount of material, and it is material that cannot be readily digested or easily remembered. As has been mentioned, in many respects it is already set out in the 1975 report in a slightly different manner.

We hope we have made the right decision. We believe our presentation will prove to be a useful exercise, and maybe some of the comments you hear this morning will trigger a response or remind you of provisions when you hear other presentations.

To assist you in following this presentation on the act, we will have an index to my comments, which will be shown on the slide here, and as we go through the act the specific provisions being spoken about will be shown on the other slide. This will keep you in touch with just where we are in the presentation.

With those introductory remarks, I would now like to outline in general terms the provisions of the present Loan and Trust Corporations Act. As you will recall, the present act combines the law relating to loan corporations and trust companies. In the process of combining these two areas of law a title was created for the act that I think is a bit misleading. There is no such thing in Ontario as a loan and trust corporation; the institution is either a loan corporation or a trust company. For the sake of convenience the draftsman has chosen to use the word "corporation" throughout the act to mean either a loan corporation or a trust company. Where provisions of the act relate specifically to a loan corporation, that precise language is used; similarly, when they want to refer directly to a trust company, that is the language used.

Since the act must also deal with federally and extraprovincially incorporated corporations that wish to carry on business in Ontario, definitions have been included to identify a provincial corporation, which obviously means a corporation incorporated under the law of Ontario, and an extraprovincial corporation, meaning a corporation not incorporated under the law of Ontario. The act also defines a registered corporation, which means a loan corporation or a trust company that has been registered under the act and is therefore entitled to do business in Ontario.

11 a.m.

Certain provisions of the act--for example, those dealing with the process of incorporation--apply only to provincial corporations, while other provisions--for example, those relating to the keeping of books--apply only to registered corporations having their head office in Ontario.

The next part is the incorporation of loan corporations and trust companies. Sections 4 to 18 of the act set out the procedure for incorporating a loan corporation or a trust company in Ontario. An application for incorporation is made by a petition to the Lieutenant Governor in Council through the minister and in a practical sense is delivered to the registrar.

The application must be made by at least five persons who constitute themselves as a provisional corporation and who have subscribed at least \$1,000 each. At least \$1 million in cash must be subscribed and on deposit in a chartered bank. A copy of the proposed bylaws governing the company must also be forwarded and they are subject to review and amendment by the minister.

A grant of incorporation is made by letters patent. Section 17 of the act sets out certain requirements for incorporation and for reasons lost in the history of the drafting of the act the section refers to a trust or loan company. The requirements are that it must be shown to the satisfaction of the Lieutenant Governor in Council that:

"(1) ...in the locality in which the head office of the proposed company is to be situate, there exists a public necessity for a trust or loan company or for an additional trust or loan company.

"(2) ...the fitness of the applicants to discharge the duties of a trust or loan company is such as to command the confidence of the public and that the public convenience and advantage will be promoted by granting to the company the powers applied for."

It is worth noting that until Bill 212, An Act to amend the Loan and Trust Corporations Act, was passed in December 1982, there were no comparable tests of fitness for persons acquiring control of an existing loan corporation or trust company. When Bill 212 was brought forward to deal with this problem of the lack of control over the transfer of ownership, the general test set out in section 17 of the act was codified to some extent.

The provisions of Bill 212, which are now found in subsection 81(7) of re-enacted section 81 of the act are as follows:

"The registrar may refuse his consent under subsection (1)"--that is, to a transfer of shares--"where, in his opinion, it would be in the public interest to do so and without limiting the generality of the foregoing the registrar may refuse his consent where the shareholder or holding company or any person associated with the shareholder or holding company,

"(a) is or has been bankrupt;

"(b) has been convicted of a criminal offence, an offence under this act or an offence under the Securities Act;

"(c) is or has been subject to a cease trading order under the Securities Act; or

"(d) is under examination under section 152."

It would appear logical to make section 17 and subsection 81(7) of the act consistent.

Mortgage investment company: Returning to the general outline of the act, sections 19 to 26 deal with a loan corporation that has been designated a mortgage investment company, but I would like to return to these sections later when we reach other sections applying specifically to loan corporations. I would like to continue with the general incorporation proceedings. The next section is the statutory and general meetings of shareholders.

Mr. Cassidy: Excuse me. Rather than go for a full hour and then invite questions, could you find one or two appropriate places to pause to see if there are questions?

Mr. Crosbie: Surely.

The Vice-Chairman: I am sorry. If you had so indicated, Mr. Cassidy, we usually try to be relatively easy in that direction, so the committee members could interject with a question.

Mr. Crosbie: Mr. Chairman, if I may suggest, my presentation is broken up into parts of the act. Would it be acceptable to have questions at the end of each part?

Mr. Cassidy: Yes. That will be fine, if you will indicate when, such as every five or 10 minutes.

Mr. Crosbie: Is there anything you would like to question so far?

Mr. Cassidy: I can do it now or when you indicate.

Mr. Crosbie: I am easy.

Mr. Cassidy: My two questions are: Although there are those tests of not being bankrupt and that kind of thing, is there any specific test for fitness? That is perhaps a more vaguely defined concept, but I remember the 19- or 21-year-old who was basically prevented from taking over Dominion Trust, I think it was.

Mr. Crosbie: To date, we have not codified anything in the act on specific tests of personal fitness. We put in the general test of public interest. Now whether one could argue that a young person with no business experience is an inappropriate chief executive officer of the trust company falls, I think, under the public interest.

Mr. T. P. Reid: You should meet some of those cabinet ministers.

Mr. Crosbie: I think this point is going to come out when we discuss this. You could have a situation where the owners of the corporation's shares have no technical capacity to operate a trust company, but they have hired expert staff. I think you would have to be careful to not set up a criterion that prevents a person from owning a trust company just because he does not have the technical skills to run it.

Mr. Cassidy: The second point is that neither the amendments nor the original act provide the authorities with the ability to look into whether these people are worthy of our confidence. You used the phrase "when the company is being formed under section 17, there has to be some demonstration that these people are worthy of confidence."

Mr. Crosbie: Yes.

Mr. Cassidy: Having seen incidents where people certainly prove themselves no longer worthy of confidence, none the less there is no test in the law by which the registrar, for example, can say, "This particular firm is no longer worthy of confidence." Once you get in the front door, the test of being worthy of confidence is no longer applicable. Is that right?

Mr. Crosbie: Yes, at present.

Mr. Thompson: Except under the new amendment of last December 21.

Mr. Cassidy: That is for the transfer of ownership?

Mr. Thompson: The transfer of ownership, yes.

Mr. Cassidy: Once the amendment has taken place, even if you were okay when you took over the company but then you begin to act in a way which brings the company into disrepute or something like that, you cannot be gotten rid of because you are undermining public confidence in trust companies?

Mr. Crosbie: I think the test you brought into this of does that activity reflect on the economic or financial condition of the company is valid. For example, through the owner's inappropriate activity the company loses business, and its liquidity, capital or whatever is affected in some way. But I suppose you get into a very difficult area if you apply some sort of judgement on somebody's moral behaviour by asking if it makes him unsuitable to own a trust company. It is a totally unrelated area.

Mr. Cassidy: Presumably, what he does in his private life is irrelevant.

Mr. Crosbie: Exactly. I think once you are in there

running the company, a key criterion is going to be how well the company is run.

The Vice-Chairman: Any other questions at this point before Mr. Crosbie proceeds?

Mr. Crosbie: Sections 27 to 32 outline the procedures and requirements for the initial statutory meeting of shareholders and subsequent general and annual meetings.

Proxies: Sections 33 to 41 deal with the form, the use and solicitation of proxies. It is interesting to note that it is the Ontario Securities Commission and not the registrar that has been given the power under the Loan and Trust Corporations Act to grant exemptions from certain provisions relating to proxies.

Mr. Boudria: Excuse me. Why is that?

Mr. Thompson: To put them under a common standard for proxy solicitation for all corporations in Ontario. To put them under sort of one roof in that particular area, because the main thrust of the Loan and Trust Corporations Act has been towards the protection of the depositors and not necessarily the shareholders.

11:10 a.m.

Mr. Crosbie: We are faced with something here that will come up in a number of other areas. As the 1975 select committee report pointed out, there was a desire or a need to make the Loan and Trust Corporations Act parallel or consistent with the current legislative thinking for business corporations. Because this is not only a registration act but also an incorporation act, it does include a number of legislative provisions relating to incorporation and there is a need to make it uniform.

One of the ways the uniformity was introduced here on proxies, and on the next slide, which deals with insider trading, was to refer it to the securities commission, because that is their forte. It brought into the situation a group of people who were very experienced in dealing with these issues instead of trying to create within the loan and trust administration a parallel capacity to do what the securities commission is already set up to do quite well.

Turning, then, to insider trading, which is sections 42 to 48 of the act, this also, as I said, involves the Ontario Securities Commission and sets out rules to govern insider trading in loan corporations and trust companies. These sections require the filing of reports by insiders of any change in their ownership of or control over capital securities of a loan corporation or trust company, and they create a liability for insiders to compensate persons for any direct loss suffered as a result of the use of confidential information. They also make the insider accountable to the corporation for any direct benefit or advantage received as a result of an improper insider transaction. In this regard the High Court may require the Ontario Securities Commission to commence or continue an action on behalf of the corporation to enforce the liability of an insider.

The next section is on bylaws, sections 49 to 55. They set out procedures for making, recording, inspecting, reproducing, amending, varying and repealing bylaws. I think they are fairly standard provisions.

The next area is directors, and sections 56 to 69 deal with the term of office, election, qualifications, retirement, remuneration and other powers of directors. This portion of the act also deals with the election of a president or one or more vice-presidents and the establishment of an executive committee. Provision is also made for the appointment of officers, such as the secretary or the treasurer. Directors are prohibited from declaring or paying any dividend or bonus when the corporation is insolvent, and the directors are made liable for up to one year's wages of a corporation's labourers, servants and apprentices, with certain qualifications.

Are there any questions about the directors?

Shares, calls on capital stock: Sections 70 to 87 of the act set out the procedures and liabilities where an amount unpaid on a share is called. Where the whole amount payable to a corporation for shares has not been paid, the shares cannot be transferred without the consent of the directors. If they allow them to be transferred to a person who is not apparently of sufficient means to pay fully for the shares, the directors may become personally liable for the unpaid balance.

Rules are also set out to determine when a person is a nonresident and also what constitutes a voting share, who are associated shareholders and what is deemed to constitute control of one company by another person or company. Under the act no nonresident can be entered on the books of a corporation where to do so would increase the total nonresident shareholding beyond 25 per cent of the total shares or would increase the nonresident's shareholding beyond 10 per cent.

A nonresident cannot vote shares that are not entered in the books of the corporation, nor can anyone else vote them on his behalf. Directors may make bylaws requiring the submission of information about the ownership of shares so as to permit enforcement of these limitations on nonresident ownership.

As mentioned earlier, section 81 of the act was re-enacted in 1982. It gave the registrar authority to withhold his required consent to the entering of share ownership on the books of a corporation where the owner of the shares would thereby be entered as having 10 per cent or more of a class of voting shares or would be increasing a holding of more than 10 per cent of a class of voting shares.

This is the provision we discussed a few moments ago that allows some intervention where the ownership of a company is changing.

For the purposes of the ownership control features, there are deeming provisions about associated persons in corporations

who may be treated as one person, and the registrar is given powers to require declarations about the ownership or beneficial ownership of shares.

These sections also contain provisions that set out processes to deal with contested share transfers and for the transmission of shares by a testamentary disposition or where there is an intestacy.

Are there any questions in the area of shares?

Mr. Gillies: Excuse my ignorance in this area, but can you explain to me how a foreign-owned trust company like Avco Financial Services functions in the province? Do they have a separate board of directors for their Canadian operation? How does that work?

Mr. Thompson: To my knowledge, Avco does not have a separate board. What can be done is Ontario has enacted provisions similar to the federal trust companies legislation except for one feature. The federal legislation allows a single, nonresident shareholder to be incorporated and operate a trust company in Canada, so it can own 100 per cent of a federal trust company. Ontario provisions do not provide that for Ontario incorporated trust companies.

Under federal law there also is a distinction that, if you transfer that ownership further, if the nonresident owning the 100 per cent wishes to dispose of that holding, it must do so to a Canadian.

Mr. T. P. Reid: In the proposals there is the approved list of trust companies in Ontario. It raises a question. Are the feds going through the same process right now as we are? Are they amending their legislation? Do they have a committee, civil servants, or whatever looking at their situation?

Mr. Crosbie: My understanding is that, as you know, a federal white paper was produced and they were working on an act, but the message we got was it does not have the same priority it once had and has been put on the back burner.

As you have probably heard, Mr. MacLaren has a committee looking at the whole area of financial institutions. Whether that will generate any pressure to proceed with the trust legislation, I do not know. I know the trust industry is very interested in having the federal trust legislation revised, but I do not know if any work is going on right now.

Mr. T. P. Reid: Are we going to have any information in the presentations on how the federal act impacts on Ontario, or are we going to be dealing strictly with what comes under our jurisdiction?

Mr. Thompson: In certain areas we have made reference to the federal act, but we have not done an overall résumé of the two parallel jurisdictions except where it is felt that, under a standard of uniformity, if Ontario has rules applicable for trust

companies they should be adopted by all trust companies operating and registered in the province wherever incorporated, and they should be bound by them.

Mr. T. P. Reid: Whether they are federally incorporated or not?

Mr. Thompson: Yes, or extraprovincially.

Mr. T. P. Reid: Or extraprovincially.

11:20 a.m.

Mr. Crosbie: I might suggest that when we come to that recommendation in the white paper, we might see if we can have something available by that time dealing with your specific question. I think it is going to be one of the contentious issues, as between provincial and federal jurisdictions, as to how far we can go in requiring uniformity for a federal company carrying on business in Ontario.

Mr. Breithaupt: Except under licensing, rather than a statutory approach.

Mr. Crosbie: Mr. Breithaupt, that is the problem. Can we, in the process of granting a licence, require the federal corporation to conduct its business in Ontario, in effect pursuant to the Ontario legislation; make it a condition of the licence. Obviously it cannot be part of the incorporation, because that is federal.

Mr. Breithaupt: It is something like that traditional insurance view that I thought our superintendent had, which was, as I recall, a federally incorporated insurance company can do business everywhere except in the provinces. With the clear understanding that the licensing function was, could and should be a particularly strict hurdle to have to jump--similarly in the trust company experience--I would think the opportunity is there under the general theme of property and civil rights, to have that traditional requirement which clearly can be upgraded at least. A challenge may, of course, occur but the principle surely is a sound one on which you can act.

Mr. Crosbie: If I could put maybe a gloss on it, I think if we have laws of general application in the province, a federal corporation can be required to comply with them. The other general statement is we cannot frame our laws in such a way as to frustrate the intent or purpose for which a federal corporation has been incorporated.

Mr. Breithaupt: Except that the incorporation federally is the convenience, more so than a right to deal with provincial responsibilities and to avoid what those responsibilities might be.

Mr. Crosbie: That is correct. I was going to go on to say that there is the other facet of it where you are clearly within provincial jurisdiction, which I think we are in trust matters. I do not know why any legislation in the province that

regulates a trust company per se should not be binding on a federal trust company.

Mr. Breithaupt: So long as it is equally applied, I cannot see why it would either.

Mr. Crosbie: When you get into the loan corporations, which are closer to banking, the arguments get a little more tenuous.

Mr. Breithaupt: The occupied-field thing may also prevail then.

Mr. Crosbie: Yes. There are some very tricky questions to be resolved in the process of developing the legislation in this area.

The next heading is, "Increase or Decrease of Capital Stock and Subdivision of Shares." This is set out in section 88 to 90. Where a corporation has been registered under the act for a continuous period of five years, the directors by bylaw may authorize no par value shares. A bylaw to increase or decrease a corporation's capital or to affect the par value or paid-up status of shares, must be confirmed by two thirds of the shares represented at a meeting called for the purpose and at least 50 per cent of all the voting shares must be represented. Thereafter, the bylaw must be confirmed by the Lieutenant Governor in Council.

Are there any questions about that part of it?

Under "Books," sections 91 to 97 outline the record books that must be kept by every loan corporation or trust company having its head office in Ontario. The contents of the books, the rights of examination and inspection are set out, including the right, upon payment of a reasonable charge, to obtain a list of shareholders and their shareholdings. However, the use of such a list is limited to purposes connected with the corporation. The provisions spell out the ownership rights of the corporation in its books and prohibit any claim or lien in respect of the books by any officer, auditor or solicitor of the corporation.

Are there any questions on that?

Next is, "Audit and Statement to Shareholders." Sections 98 to 102 deal with the audit of the corporation and the directors' annual statement to the shareholders. Procedures for appointing and dismissing an auditor are set out. Where an auditor is to be removed at a general meeting called for the purpose, he has the right to make representations to the shareholders and the corporation must, at its own expense, deliver such representations to the shareholders with the notice of the meeting.

The provisions deal with the qualifications of an auditor for a registered corporation and with circumstances where conflict of interest may or may not preclude a person from being the auditor of a corporation. The auditor of a registered corporation is required to make reports to the shareholders on the financial statement presented by the directors and to the registrar on the annual statement filed with the registrar.

In these reports, the auditor is required to state whether he has obtained all the information and explanations he has required. He must state whether in his opinion the financial statements present fairly the financial position of the corporation as at the date of the balance sheet included therein and the results of the corporation for the financial period ended on that date. Further, he must state whether the financial statements are in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

This is all in accordance with the information he has obtained and the explanations given to him as shown on the books of the corporation.

Where the auditor's opinion is not unqualified, he must state in the report the reasons for any qualification. He must also make such statements in his report as he considers necessary if the corporation's financial statement or annual statement is not in general agreement with its accounting records, or any requirements of the act, or as prescribed by the registrar.

Finally, if proper accounting records have not been kept, so far as it appears from his examination, the auditor is given a statutory right of access to all records, documents, accounts and vouchers of the corporation. He also may require information and explanation from officers and employees of the corporation. He has the same rights in respect of subsidiaries of the corporation. The auditor may attend shareholder meetings and may be heard and may be asked questions at such meetings.

The directors are required to lay before each annual meeting a financial statement respecting the financial position of the corporation. At least 10 days before the date of the annual meeting, the corporation must mail to each shareholder a copy of the financial statement and a copy of the auditor's report.

The directors are required to elect an audit committee of at least three directors, the majority of whom are not officers or employees of the corporation or of an affiliate corporation. This committee is to review the financial statement and the auditor may appear before this committee.

Are there any questions about the audit?

Mortgage investment company: I mentioned this earlier. It is set out in sections 19 to 26. I would like to deal with the situation where a loan corporation is designated a mortgage investment company. I would emphasize that. This only applies when a loan corporation has applied to the Lieutenant Governor in Council for an order designating it a mortgage investment company for the purpose of carrying on business as a mortgage investment corporation within the meaning of the Income Tax Act of Canada. When so designated, the loan corporation is not allowed to borrow money on deposit, and must limit its undertakings to Canada.

The general purpose of the mortgage investment company is to

provide an additional source of funds for residential mortgages. Such a company may invest its funds in real estate or leaseholds in Canada for the production of income, either a loan or jointly with any corporation incorporated in Canada, or any person administering a trust governed by a registered pension plan or deferred profit sharing plan, as those plans are defined in the Income Tax Act. Of course this is subject to various rules relating to the quality of the investment.

11:30 a.m.

The borrowing multiple of a loan corporation that has been designated a mortgage insurance company cannot exceed five times the excess of book value of its assets over its liability. Although there were a number of these corporations in Ontario, at present there are no Ontario loan corporations designated as mortgage investment companies.

Are there any questions about the mortgage investment companies?

Mr. Cassidy: I think what I heard you say at the very outset was that this section of the act occupies three or four pages and is currently not used by Ontario.

Mr. Crosbie: No. It is just that there are no companies incorporated in Ontario. It is available.

Mr. Cassidy: Okay. It is available, but--

Mr. Crosbie: It is not being used, because there are no companies.

Mr. Cassidy: Okay. Fine.

Mr. Thompson: There are five federal companies that operate under that provision--

Mr. Cassidy: But not under this act.

Mr. Thompson: --but not under this act.

Mr. Crosbie: You might want to explain a bit of the background if you are interested in it.

Mr. Breithaupt: I am sure they operate under terms equivalent to those that this act would have provided had they been in Ontario.

Mr. Thompson: Yes, they do. The thrust of it was really to attract pension funds and others into residential mortgage lending. It was primarily a federal government program back in about the middle 1970s, and we followed suit with it. The one important distinction with these companies is that there is only a five times borrowing multiple on them, so they are a very limited type of corporation and the attraction of being involved in them is really for income tax purposes. Anybody really interested in being in the loan business or the mortgage lending business is

probably much better served by incorporating a full loan corporation.

So I really think the five that do exist were there for specific purposes, and there does not seem to be much need or desire to have further types of these corporations in operation. It may well be that, since it was part of a federal government program, there is no need for those provisions in the Ontario act.

Mr. Breithaupt: It is interesting, Mr. Chairman, that the entire structure of loan and trust corporations, one might say, developed initially from this part and power, which is the one area in the act that nobody is bothering to use any more. The world certainly has changed since that 1846 legislation.

Mr. Boudria: Is the borrowing multiple at the federal level similar to ours?

Mr. Thompson: Yes.

Mr. Boudria: Is there an attractiveness there that we do not have?

Mr. Thompson: No, they are generally parallel. But as we get into the white paper you will see we are propounding some changes in Ontario for trust companies, the minimum--

Mr. Boudria: No, I am thinking of the borrowing multiple with respect to what you are talking about now.

Mr. Thompson: Oh, no; they are identical. It is five times, no more. There is a statutory limitation on it; you cannot extend it.

Mr. Crosbie: Borrowing powers of loan corporations: To return to the general order of the act, sections 103 to 109 set out the borrowing powers of loan corporations that are incorporated under the law of Ontario, have their head office in Ontario or borrow in Ontario by taking deposits or issuing debentures or like obligations.

A loan corporation registered on or after July 1, 1968, cannot exercise any of its borrowing powers unless it has unimpaired paid-in capital of at least \$1 million. Subject to the qualifications, limitations and restrictions contained in the act, a registered loan corporation, if authorized by a bylaw that has been confirmed by two thirds of the votes of shareholders with voting rights present or represented at a meeting, may borrow money by way of loan or on deposit at such rates of interest and on such terms as the directors may determine; it may issue subordinated notes to evidence any such borrowing by way of loan or deposit; it may issue debentures, bonds and other securities to evidence any such borrowing, and it may charge, mortgage, apothecate or pledge all or any of the real or personal property of the corporation to secure any such debentures, bonds, or other securities, or any money borrowed.

A registered loan corporation is required to maintain assets

in the form of cash or readily convertible to cash, to an aggregate of 20 per cent of the amount of deposits and obligations payable in less than 100 days. The total amount of money that may be borrowed by a registered loan corporation by way of deposits, debentures, bonds and other securities, must not exceed four times the excess of its assets over its liabilities, except where the Lieutenant Governor in Council has authorized an increase in this borrowing multiple.

Generally speaking, this may be done up to a limit of 20 times the excess of assets over liabilities. The act allows the borrowing multiple to exceed 20 times where the financial condition of the loan corporation complies with special standards established by regulation. The act sets out a number of tests related to the issue of subordinated notes and borrowing multiples in excess of 20.

These rules governing the borrowing multiple do not apply to registered loan corporations incorporated and registered under the Loan Companies Act, Canada, but such companies are required to file with the registrar a copy of any application under the Loan Companies Act, Canada, to increase their borrowing and a copy of any approval they receive in respect of such application.

Are there any questions with respect to the borrowing of loan companies?

Next is "Powers of Trust Companies." Sections 110 to 121 set out the powers of a provincial trust company and any other trust company that has the capacity to exercise such powers. Such trust companies may deal with real and personal property upon any trust or trusts. They hold as trustee or bailee documents, securities, jewellery, etc., and guarantee their safekeeping. They may store safely securities and personal property and rent compartments for that purpose. They may act as an attorney or agent for the transaction of business and management of estates. They may act as agent by issuing or counter-signing certificates of stocks, bonds or other obligations and to manage any sinking fund therefor.

They may act as an executor, administrator, trustee, receiver, liquidator, assignee, custodian or trustee in bankruptcy. They may invest trust money in any securities in which private trustees may, by law, invest trust money. They may guarantee any investment they make. They may sell, pledge or mortgage assets of the company. They may enter into conveyances and contracts necessary to carry out the purposes of the company.

A trust company may operate a common trust fund in which moneys belonging to various estates and trusts are combined to facilitate investment. Detailed rules for passing accounts in respect of a common trust fund and for their management are set out in the act and in the regulations.

A trust company may also operate a pooled trust fund in which money belonging to at least 50 participants is combined for the purpose of investment. No interest in a pooled trust fund can be offered to anyone until the company files with the registrar evidence of the trust advertising and training of personnel.

A provincial trust company cannot borrow money by taking deposits or by issuing debentures, but may borrow money by the issue of subordinated notes and may borrow on the security of its own assets, where the borrowing bylaw has been approved by two thirds of the shareholders voting on the bylaw. However, a trust company may receive deposits of money repayable on demand as trustee for the depositor and pay interest on the deposits and guarantee repayment. It may also receive money in trust for the purpose of investment and may retain the interest on profits resulting from such investment that is in excess of the interest payable on such moneys.

11:40 a.m.

I might point out that under the common law a trustee was required to account for all the profit derived from his management of trust assets. What the legislation specifically has allowed a trust company to do is to specify the level of profit that it will return to the beneficiary of the trust, and anything in excess of that is its profit; anything less than that is its loss.

Mr. Cassidy: Deposits--I am confused. Can they or can they not take them?

Mr. Crosbie: They take deposits but they receive them as trust deposits, not as a debtor-creditor deposits.

Mr. Cassidy: I am looking at section 113 which says a trust company "does not have power to borrow money by taking deposits."

Mr. Crosbie: Yes. But if you look at section 115, they are making the distinction there between taking deposits as debtor and creditor, and taking them as trustee and beneficiary of the trust. As to this point, some people say this is a legal fiction that has been created to allow trust companies to become banks.

Mr. Cassidy: The distinction escapes me. It is a bit theological, is that right?

Mr. Crosbie: In a sense, yes.

Mr. Cassidy: Thank you.

Mr. Crosbie: It is the way they have been designated. When they go in, they go in as a trust and they are under a trust document. The documentation will establish the trust and therefore the liability of the company in receiving that deposit is that of a trustee. This gets back to our comments earlier about the nature of the money in the hands of the trust company, in holding it as trustee.

Mr. Gillies: Further to Mr. Cassidy's point, what is the obligation of the trust company to indicate to the depositor the nature of the deposit, as to whether it is a fund from which there can be borrowing or a fund from which there cannot? What I am trying to get at is whether the depositor walking in off the

street actually knows there is a distinction and that there could be borrowing against it.

Mr. Crosbie: I doubt very much the average depositor knows the legal distinction. It is one of the problems that is addressed in the white paper, not only as to whether it is a trust as opposed to a debtor-creditor relationship, but also in terms of guarantees of repayment--the application of the Canada Deposit Insurance Corp. to the investment--when is it a trust deposit guaranteed, when is it not and who guarantees it?

We have seen examples where the investment is said to be a guaranteed investment and what you find out is the company itself is guaranteeing it, which is literally no better guarantee than the company itself. There is a problem here of public education and it is one of the issues that is addressed in the white paper.

Mr. Thompson: I think the importance of this is that in the development of the trust industry there was the issuing of guaranteed investment certificates or GICs. These clearly state the trust nature of the investment made.

In effect, they are nothing but a five-year or three-year term deposit, but at one time this was almost the exclusive preserve of the trust industry. Now banks have been allowed to offer term deposits.

In the mind of the public, the difference between having a term deposit with a bank and the traditional GIC is probably lost. That is why we are referring to it as an area for consumer education.

Mr. Breithaupt: Particularly when we do not have (inaudible) similarly guaranteed under the Canada Deposit Insurance Corp.

Mr. Crosbie: Quite so.

Mr. Cassidy: I am sort of jumping around here as I begin to become familiar with the act, which has not been something I have been picking up over James Bond at night.

I see that in these sections, 110 to 121, a great deal relates to the trustee responsibilities in terms of the notes, but then you get back to the question of the security for the notes, and that is where the whole thing begins to come apart, in our recent experience.

Mr. Crosbie: We come to that in subsequent sections, around sections 178 to 193, dealing with the investments or what is done with the money. We will be coming to that.

Mr. Cassidy: I am looking at subsection 118(7) which says that the trust companies "shall at all times maintain unencumbered investments" that "in the aggregate equal the principal amount of the outstanding subordinated notes." Subordinated notes; are they something different?

Mr. Thompson: Yes.

Mr. Crosbie: It is defined in the definition section, but it is really--

Mr. Cassidy: Okay. Is there a similar requirement related to their trust deposits, then, that they have to maintain assets or investments that equal the principal amount of the trust deposits?

Mr. Thompson: Yes. Later we will get into the requirements of how they keep that segregated and what it has to be invested in, but a subordinated note is more a form of capital. It was introduced at a time when it was very difficult to raise capital on the capital markets by way of common shares or even preferred shares.

About 10 years ago this was denoted as a safe way to accumulate capital that could then be taken into the borrowing base of the corporation for determining how much they could attract from deposits. GICs were over here; the subordinated note was treated as capital, as part of the base.

Mr. Cassidy: It would be a bit like a loan by a shareholder in a company, is that right? Basically it is the last thing to get paid off.

Mr. Thompson: Yes, it would. By its terminology it is subordinated. It really stands just above the equity.

Mr. Cassidy: I understand that.

Mr. Breithaupt: It also can be used to build up the necessary capital upon which to substantiate the present loan situation, if other assets have gone down somewhat in value.

Mr. Thompson: Yes. It can in some instances be available to shareholders to advance money by way of subordinated note, particularly in cases--

Mr. Breithaupt: Or required of the senior people who may have the substantial interest to ensure that the base is secure.

Mr. Thompson: Yes.

Mr. Cassidy: Were subordinated notes used as a device by some of the operators who were abusing the trust companies?

Mr. Thompson: No.

Mr. Cassidy: They were not?

Mr. Thompson: No.

Mr. Crosbie: Just to finish the last bit, a bylaw to authorize a trust company to receive trust deposits or trust funds for investment must be approved by two thirds of the shareholders voting on the bylaw.

Mr. Cassidy mentioned this next one. The total amount of money received as trust deposits or for investment or that has been borrowed by a trust company cannot exceed 12 1/2 times the excess of its assets over its liabilities. You will recall when we talked of loan corporations that the ratio was four times; for trust companies it is 12 1/2 times.

The borrowing multiple can be varied by the Lieutenant Governor in Council, who may increase the borrowing multiple to 20 times the excess of assets over liabilities, as in the case of loan corporations. Once again, where a trust company meets certain prescribed financial standards, the Lieutenant Governor in Council may increase the borrowing multiple above 20 times. There is actually no limit, but in practice 25 is the maximum multiple that has been given to either a loan corporation or a trust company in Ontario.

Mr. Gillies: Who was it that had the 25?

Mr. Crosbie: There were quite a number of them.

Mr. T. P. Reid: What tests are applied?

Mr. Thompson: They are set out in the regulations to the act.

Mr. T. P. Reid: Is this a discretionary thing? If they come in and they meet all the tests under the regulations, is it an automatic thing? Do you as registrar have any discretion on whether or not they get it?

Mr. Thompson: No, the discretion goes to the Lieutenant Governor in Council. It would be my report on it. It does not--

Mr. T. P. Reid: But you would in fact advise the cabinet as to whether it should or should not be done.

Mr. Thompson: Yes.

Mr. T. P. Reid: How often is this done? For instance, how many right now are exceeding the 12 1/2 times limit? Do you have any idea?

Mr. Thompson: Yes, we can give you--

Mr. T. P. Reid: Under the 17--

Mr. Thompson: You will find that your major companies, about the top six, would be up around the 25 level; the more junior companies would all be below 20. But I think the regulation really controls the quality of mortgages and the spread of mortgages that they are--

11:50 a.m.

Mr. T. P. Reid: Could I change that to "is supposed to"?

Mr. Thompson: Yes.

Mr. Gillies: Could you tell us or get for us the borrowing multiple that was applicable to the three companies with which we ran into problems?

Mr. Thompson: I can give them to you. It was 12 1/2 times the minimum for Seaway, it was 15 times for Greymac, and it was 22 1/2 times for Crown.

Mr. Chairman: Are there any other questions? Mr. Crosbie.

Mr. Crosbie: In terms almost identical to those applicable to a loan corporation, a trust company is required to maintain at all times assets in the form of cash or readily convertible into cash to an aggregate of 20 per cent of the amount of deposits of funds received for guaranteed investment coming due in less than 100 days.

Provisions in this part of the act also deal with the appointment of a trust company as an executor-administrator or trustee. Where a trust company is appointed for this purpose, it is not required to give security for the due performance of its duties.

Are there any further questions on that area?

Mr. Chairman: Carry on, Mr. Crosbie.

Mr. Crosbie: General powers: Sections 122 to 133 of the act identify the general powers that are applicable to both loan corporations and trust companies. The sections deal with the capacity of a corporation and its power to act extraprovincially, the basis of lending on the security of its own shares, the right of minors to deposit money in the company and several other matters of that nature.

There are two provisions I would draw to your attention. Section 123 authorizes the Lieutenant Governor in Council to suspend or revoke the charter of a corporation for cause. Section 129 prohibits any directors, officers or employees from transacting the business of an insurance agent or broker and from pressuring any borrower or mortgagee to place insurance in or through any particular agency or brokerage office.

A trust company may require that the insurer be approved. Also, the prohibition of the section does not apply to a director whose major occupation is the insurance business. Are there any questions?

Mr. MacQuarrie: On section 129, I was just wondering--we see the evolution of some of these conglomerates dealing in all kinds of financial services from trusts through loans. They are seemingly related to insurance companies, in a sense. I just wonder how closely that sort of thing is monitored or policed.

Mr. Thompson: If I may endeavour to answer that, the

provisions in the Loan and Trust Corporations Act are very explicit--

Mr. MacQuarrie: And others.

Mr. Thompson: --to prevent the trust company acting as an agent. The reason for that is particularly because of the heavy residential mortgage business of a trust company or a loan corporation. It is pretty obvious it would be capable of steering business via a selected group of companies. That provision has been in there, to my knowledge, more than 30 years to avoid that sort of situation.

However, under the federal statutes a company is allowed to have a preferred list of insurers. In other words, if you are a person borrowing on a mortgage from a trust company and you have your insurance with the X company, they do have a right to say, "No, we do not want the X company because of the nature of the risk," or something like that.

We have received absolutely no complaints that there has been any effort to steer business via various companies. In fact, about five years ago was the last time one of the trust companies--the last one that we know of--simply deleted its preferred list and simply had the requirement that it be a licensed company in the province.

Mr. MacQuarrie: Instances come to my mind of this sort of evolving situation. It is mainly an American phenomenon. You see Citibank getting into all kinds of financial services. You see American Express going into fields that are not, strictly speaking, the issuance of travellers' cheques or credit cards. Then you see some of our own major department stores starting to get involved in everything from insurance to making up income tax returns.

My initial question was directed at finding if there is any possibility that this section of the Loan and Trust Corporations Act is being violated at this time.

Mr. Cooper: No, but it is the only industry that has a specific restriction contained in its enabling legislation. On the other side of the coin, there are regulations under the Insurance Act which specifically prohibit anyone from owning an insurance agency other than the principal operator. The licensee for the agency must own more than 50 per cent of the common shares of it. There is no provision for financial institutions owning an insurance agency, per se, under Ontario law.

Mr. MacQuarrie: If a company like Allstate or whatever was connected with one of our better known merchandisers, there is no possibility then of them getting into the loan and trust business? Fair enough. Thanks.

Hon. Mr. Elgie: I think you should be aware that is an issue that they are raising.

Mr. MacQuarrie: I know. That is what prompted the question.

Mr. Thompson: In the United States the term "loopholism" has been coined; you find ways through the various structures.

Mr. Crosbie: I think it is clear that the insurance company could not directly own the trust company, but where the loopholism, if you will, develops is if you have a common holding company that owns them both.

Mr. MacQuarrie: Right. I thought I would raise that.

Hon. Mr. Elgie: In regard to that holding company issue, I would ask you to look at page 9, recommendation 10, "The power of the registrar to regulate and control transactions between a loan and trust corporation and its holding company should be increased and more closely controlled."

Mr. Crosbie: Continuing, The amalgamation of corporations and purchase and sale of assets: Sections--

Mr. T. P. Reid: Excuse me, could you or Mr. Thompson, or anyone, explain to me in layman's language what section 131 means?

Mr. Crosbie: Section 131? I would defer to Mr. Thompson. If I did it, it would be in purely layman's terms.

Mr. Thompson: I think that various shares of a corporation may be held under a trust. In other words, it may be registered in John Doe in trust. Deposits may be made in a corporation saying "John Doe in trust." This legislation is comparable to that in the Bank Act and all others. What it is really saying is that the company that has a contract of some nature with John Doe in trust is not bound to see whether John Doe in trust is acting within the terms of its trust.

12 noon

In other words, as you will see in subsection 2, if it pays the money back to John Doe in trust in that proper form--

Mr. T. P. Reid: That is the end of their liability.

Mr. Thompson: Yes, that is the extent of their obligation. That is pretty standard in all types of financial institutions.

Mr. Crosbie: Continuing with sections 134 to 145 of the act, they establish the requirements and procedures for the merger or amalgamation of corporations; that is, the uniting of two loan corporations, the uniting of two trust companies or the uniting of a loan corporation with a trust company, provided in each case they are both registered under the act.

The sections also provide for the purchase and sale of assets of these corporations. A loan corporation may only purchase the assets of another loan corporation, but may sell its assets to

either another loan corporation or to a trust company. Conversely, a trust company may purchase the assets of either a loan corporation or another trust company, but may sell its assets only to another trust company. The purpose of that is you do not want a loan corporation to take over a trust company and remain as a loan corporation with the trust assets.

A copy of any agreement for merger or amalgamation, or sale or purchase of assets must be mailed to every shareholder and such agreement requires the approval of the shareholders holding at least three quarters of the shares with voting rights represented at the meeting, and at least 50 per cent of all shares with voting rights must be represented. The registrar must be given notice and copies of the agreement at least one month before the date of the shareholders' meeting of both companies involved.

Once ratified by the shareholders of each corporation, the agreement requires the consent of the Lieutenant Governor in Council, following which the minister certifies the consent and declares the purchase and sale of assets or the amalgamation. The registrar then gives public notice in the Ontario Gazette.

The registration of the minister's certificate in a registry office is evidence of the transfer of the land and interest in land being acquired, and reference to it is sufficient evidence of the transmission of title in respect of personal property for the purposes of the Personal Property Security Act.

In the case of the purchase and sale of assets, no further conveyance is required. The rights of creditors of the selling corporation are protected in this process.

Where an amalgamated corporation is to continue as a provincial corporation, the Lieutenant Governor in Council issues letters patent as at the date of the consent, confirming the amalgamation agreement and continuing the amalgamated corporation under the act. A procedure is also set out to enable a registered loan corporation to acquire not less than 67 per cent of the shares of another loan corporation and then, within two years, proceed with a merger or amalgamation.

As I mentioned, where a trust company combines with a loan corporation, the continuing corporation must be a trust company.

When trust companies merge or amalgamate, the act provides for an automatic transfer of all trusts to the continuing trust company. Where, after the merger, an instrument intends a trust to be managed by the selling trust company which will then no longer be in existence, the instrument is read as if it referred to the purchasing or continuing trust company. Trust companies are also given the power to amalgamate by acquiring not less than 67 per cent of the shares of another trust company and completing the amalgamation within two years.

Are there any questions on the amalgamation procedure?

The Vice-Chairman: There are no questions, Mr. Crosbie. Please proceed.

Mr. Crosbie: The registrar: Sections 146 to 160a deal with the appointment, duties and powers of the registrar, who is appointed under the act by the Lieutenant Governor in Council. The act also provides for the appointment of an assistant registrar.

The registrar is required to keep a loan companies' register for loan corporations and a trust companies' register for trust companies. A corporation may be registered in only one of these registers. It is the registrar's duty to determine, distinguish and register corporations that require and are entitled to be registered.

The registrar must prepare for the minister, print and publish an annual report based upon statements filed by the corporations and on any inspections or inquiries that have been made, showing the particulars of the business of each corporation.

In the report, only investments authorized under the act may be allowed as assets and the registrar may correct errors in a corporation's annual statement. The registrar may require a corporation to secure an appraisal or may procure an appraisal himself of the value of any real estate or security that he believes is overvalued. Where it is established it is overvalued, he may use the reduced value in his report.

With the approval of the minister, the registrar, during business hours, may examine the books and documents of the corporation. It is an offence to refuse or neglect to afford such an examination. A corporation may also have its registry cancelled or not renewed for failing to afford such examination.

Provision is made for carrying out special audits of the corporation that is three months in default in delivering its annual statement or that has not had an audit of its books and accounts for 18 months. Special audits may also be ordered where 25 shareholders holding not less than \$10,000 in shares allege fraud, illegal acts, repudiation of contracts or falsification of accounts. Refusal to have an audit conducted or obstruction of a special audit may result either in the termination of the registry of the corporation or its nonrenewal.

Where the special audit discloses improper acts, the registrar, after giving the corporation an opportunity to be heard, may continue, suspend or cancel the registry or impose terms or conditions.

Under section 152 of the act, the section under which Mr. Morrison was appointed, the minister is empowered to appoint a competent person to carry out a special examination, an audit of the books of a corporation and to inquire generally into the conduct of its business. The examiner so appointed may summon witnesses and take evidence under oath, and for the purposes of the examination and audit, has the powers of a commission under part II of the Public Inquiries Act. The registrar may require a corporation to make, in addition to its annual return, a return of additional information verified by affidavit of one of its officers.

The registrar is required to have the head office of each registered corporation visited and inspected at least once annually unless he adopts the inspection of another government. On the basis of this inspection, the registrar reports to the minister on the financial condition of the corporation and on whether or not it has complied with the act.

Provision is also made for the registrar, on the instruction of the minister, to carry out further inspections of a corporation including examination of its officers, agents and servants under oath. For this purpose, the registrar may require the submission of statements about the affairs of the corporation and the making of books and records available at the head office or chief office of the corporation in Ontario.

If, as a result of the examination, the registrar is of the opinion that the assets of the corporation are insufficient to justify its continuance in business, he must make a special report to the minister on the condition of the corporation. If the minister, after giving the corporation a reasonable time to be heard, reports to the Lieutenant Governor in Council that he agrees with the report, the Lieutenant Governor in Council may suspend or cancel the registry of the corporation. The corporation must thereupon cease to transact further business.

However, the minister may issue a conditional registry to allow business to continue for the protection of the public. The conditional registry may require the corporation to sell its assets and transfer its liabilities. If such sale and transfer is not made and the corporation's condition does not warrant the restoration of its registry, the registration must be cancelled.

Where the registrar is satisfied that a provincial corporation cannot satisfactorily account for any assets that appear on its books, he may immediately take possession and control of the assets. He may do this for seven days or for such longer period as the minister may order for the purpose of enabling the registrar to prepare a report to the minister on the sufficiency of the assets.

12:10 p.m.

Where the registrar is of the opinion the assets of a provincial corporation are not sufficient to meet its liabilities in respect of moneys received in trust or borrowed, he must so report to the minister. If the minister, after giving the corporation a reasonable time to be heard, agrees with the registrar, he may make the corporation's registry subject to such limitations or conditions as he considers appropriate and may prescribe a time within which the corporation must make good any deficiency of assets. If the corporation fails to make good the deficiency, the minister may apply to the Lieutenant Governor in Council for an order directing the registrar to take possession and control of the assets of the corporation.

Before the amendments of December 1982 in Bill 212, the act then went on to describe the powers of the registrar upon taking possession and control of the assets. The December 1982 amendments

provided an additional set of circumstances under which the registrar could come into possession and control of the assets of a corporation. They are set out as follows in section 158a:

"...the Lieutenant Governor in Council, without holding a hearing, may order,

"(a) that a corporation's registry shall be subject to such limitations or conditions as are set out in the order; or

"(b) that the registrar take possession and control of the assets of a corporation,"

"where, in the opinion of the Lieutenant Governor in Council, one or more of the following has occurred:

"1. There has been, on or after the 21st day of December, 1982, a transfer or issue of shares to which subsection 81(1) or (2) applies and the consent of the registrar has not been obtained under section 81.

"2. The corporation has defaulted on the payment of any of its liabilities.

"3. The corporation is not complying with this act or the regulations made under this act.

"4. The corporation's assets are not satisfactorily accounted for.

"5. The corporation's assets are not sufficient, having regard to all the circumstances, to give adequate protection to the corporation's depositors.

"6. There exists any practice of or state of affairs within the corporation that is or may be prejudicial to the public interest or to the interests of the corporation's depositors, creditors or shareholders."

Where the registrar has taken possession and control of the assets of a corporation under either of these procedures, he is required to conduct the corporation's business and take such steps as in his opinion should be taken towards its rehabilitation or, as the case may be, its continued operation. For such purposes the registrar has all the powers of the board of directors of the corporation and may exclude the directors, officers, servants and agents of the corporation from the premises, property and business of the corporation. The registrar may appoint persons to manage and operate the business of the corporation.

Whenever the minister believes the corporation meets all the requirements of the act and that it is otherwise proper, he may direct the registrar to relinquish to the corporation the possession and control of its assets. Where further efforts at rehabilitation are considered futile, the minister may direct the registrar to relinquish to the corporation the possession and control of its assets. The minister also has the option, while the registrar is in possession and control of the assets of a

corporation, to direct the registrar to apply to the court for an order for the winding up of the corporation under part VI of the Corporations Act.

The expenses of the registrar in these proceedings are payable, where the corporation involved is a loan corporation, by all loan corporations and, where the corporation is a trust company, by all trust companies.

There is an appeal to the Divisional Court in respect of proceedings carried out under pre-1982 legislation, but the order of the Lieutenant Governor in Council under the 1982 amendment is final and binding and may not be stayed, varied or set aside by any court. An interested person may, however, petition the Lieutenant Governor in Council to vary or rescind the order.

Are there any questions on that part of the act?

Mr. Gillies: I have just one question. I assume that once the Lieutenant Governor in Council establishes, let us say, the borrowing multiple of a trust company, it is then periodically reviewed by the registrar. Is that the case?

Mr. Thompson: Yes, that is the case. In fact, it also sets a yardstick or standard to gauge the ability of that corporation to manage its affairs, obviously, because it must stay within--

Interjection.

Mr. Thompson: No.

The other thing, though, is that we had no power to reduce the borrowing multiple before the 1982 amendment, so one of the problems we were encountering was that of a company that could be purchased with a borrowing multiple that could have existed of, say, 25 times and an unused capacity of five times or something.

Mr. Gillies: Since the 1982 amendment, has a borrowing multiple been reduced on any trust company? Is that a common occurrence?

Mr. Thompson: No.

Mr. Gillies: It has not. So once they are established at a certain point in the development of the company, when it has a certain financial status, for practical purposes, does it stay there?

Mr. Thompson: Yes, except if there is reason, particularly on a transfer. If you go back into the history of this, Greymac Mortgage Corp.'s multiple was reduced from 20 times to 16 times.

Mr. Gillies: I see, so it was reduced in that case.

Mr. Thompson: That was a federal corporation, where they had the power to do it, although it did not do any good because they overborrowed by \$70 million right around the corner.

Mr. Renwick: Of course, this will be a focal point in the concern of the committee because the whole purpose of the act is to provide the scheme of regulation with respect to the public interest. I particularly would draw the committee's attention to chapter 17 of the report of the select committee in 1975.

I would ask that a table of concordance be prepared so the references in the statute throughout the whole of the select committee report if possible, but in any event with respect to chapter 17, be brought up to date so members will know which section of the 1980 revised statutes is being referred to when we are dealing with the extensive concern of the select committee with the regulation and examination procedures of the registrar back at the time of that report when we were dealing with the 1970 Revised Statutes of Ontario.

The Vice-Chairman: I am assured that will be done.

Mr. Renwick: The second matter which would be extremely helpful to me and to other members of the committee, I hope, concerns section 17.05 of the select committee's report. There is a reference to the memorandum which the registrar prepared for the committee at that time, "containing details on the organization of his office, the staff at his disposal for purposes of the act, and the frequency and nature of loan and trust company examinations."

It would be extremely helpful, first, if we could have that memorandum, which was presumably written in 1974. It would be equally helpful if we were able to have a similar memorandum from the registrar as of January 1, 1982, as to what changes have taken place in the intervening period between the report of the select committee and the time of the onset of these latest difficulties within the ministry.

I particularly asked for that in section 17.06 of the select committee's report. We had the following comments with respect to examination staff: "The committee considers that it is a matter for the registrar to determine the size of staff required in order to discharge the responsibilities imposed upon him by the act and the legislation relating to deposit insurance. The committee does wish to record its conclusion, however, that should the registrar deem it necessary to add additional examination staff, any request therefor should receive immediate and appropriate action by the government."

That would be a third matter which would be of immense concern to me and to other members of the committee, as to what took place between the recommendations of the previous committee and the onset of these present difficulties which I have spotted as at January 1, 1982, as a convenient date.

12:20 p.m.

The other matter is key to the reason we are sitting here. It is the kind of problem referred to in subsection 150(4) with respect to the appraisal of overvalued real estate. From the point of view of the committee, it would be extremely important to

know in what way the registrar in his general oversight on the companies, exercised the power under that particular provision of the act. Apart from questions of structure, the key question, both for now and for the future, relates intimately and directly to the valuation procedures with respect to real estate, which again was a core part of the onset of the companies' present difficulties.

I want to mention those particular things at this juncture so that when the appropriate time comes we would have an opportunity to have some further information available to us.

The Vice-Chairman: Thank you, Mr. Renwick. The minister and his deputy indicated to me, and they also said earlier, that they will provide as much information as they can to be helpful to this committee.

I think this is perhaps an appropriate time for us to recess, to reconvene at two o'clock. I would draw to the committee's attention once more that we sit from two o'clock to 4:30 this afternoon, from 10 in the morning to 12:30 tomorrow. We also have the same sittings as today on Thursday.

The committee recessed at 12:25 p.m.

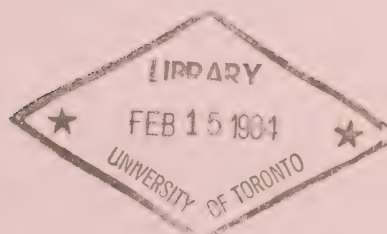
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 7, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk pro tem: Richardson, A.

From the Ministry of Consumer and Commercial Relations:

Cooper, R. G., Deputy Superintendent, Legal and Investigation
Branch of Insurance, and Assistant Registrar of Loan
and Trust Corporations

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 7, 1984

The committee resumed at 2 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Vice-Chairman: I will recognize a quorum. Mr. Breithaupt, you indicated you had a couple of questions you would like to raise.

Mr. Breithaupt: Yes, just on procedure, Mr. Chairman. I believe we have persons seconded to us from the research branch of the library. Perhaps they could be introduced and perhaps the committee could agree on some instructions for them. If the chairman would like to introduce them first, I have a couple of suggestions to make.

The Vice-Chairman: Mr. Breithaupt, they did introduce themselves to me this morning. I know the young lady's name is Mooney and I believe the gentleman's name is Nigro, but I will allow them to introduce themselves and then perhaps we might enter into the questions you had. I apologize for that. In the attempts to get things going this morning, I must apologize for not doing it very properly.

Ms. Mooney: I am Peggy Mooney.

Mr. Nigro: I am Albert Nigro, from the legislative research service.

Mr. Breithaupt: Mr. Chairman, the next point I suppose is what they should be doing. Starting at page 8 there is a series of recommendations. I suggest they go through the points. The points are expanded upon in the latter pages under each of the half dozen or so titles. It seems there will be a number of points in the presentations that we will not have spoken to. I suggest the research persons review not only the ones we do receive verbally but also these others, so that the recommendations made in them can appear under each of the recommendations that are in this white paper.

If certain things are suggested in any of the submissions that do not necessarily fit into one recommendation, I presume that at least they would fit into one of the theme areas and could then be available to us.

By the end of the presentations I would look forward to having perhaps a page on each of the recommendations and conclusions, with the item listed at the top and any references to that item in any of the exhibits. The members accordingly would have perhaps 50 pages, each one with a separate recommendation and

any references to that in the variety of materials that come before us. Then by the time we have completed our public hearings we would have that kind of a summary in one place. It would be a useful tool to refer in detail to a certain page of one of the exhibits where a particular item may be expanded upon.

I suggest if the research staff do that they will become more aware of the variety of suggestions being made to us. Also it would make it much easier to pull the ideas together in the report writing stage.

The Vice-Chairman: Thank you, Mr. Breithaupt. I personally do not have anything against going in that direction. However, the chairman carried on the discussions and I am not sure just what direction he gave. I assume he took his lead from the committee. Perhaps the researchers might be able to tell us how the proposal was put to them.

Ms. Mooney: We were told we would be involved in writing a report. I am actually getting ready to do that, summarizing the recommendations in briefs would be something--

The Vice Chairman: So that it really fits in with those comments Mr. Breithaupt made.

Hon. Mr. Elgie: What he is really saying then is that under, say, "Administration," any comments from other briefs would be added under the recommendation.

Mr. Breithaupt: On that one page.

Hon. Mr. Elgie: Yes.

Mr. Breithaupt: But we will wind up probably with 50 or 60 pages, depending on the total number of recommendations. Everything would be in one place, so we can refer to it as we go through and we would not miss the comments from groups or individuals who have not directly appeared but have simply submitted written material.

Hon. Mr. Elgie: That would include the written material briefs, as well as those orally presented?

Mr. Breithaupt: Yes.

Hon. Mr. Elgie: Letters and everything.

Mr. Breithaupt: It would all be in one place then and I think it might be useful to the committee.

The Vice-Chairman: Very good; I believe that falls within the directions that were given. If that issue is reasonably dealt with, I think I will at this point ask Mr. Crosbie to continue from where we left off this morning.

Mr. Crosbie: Thank you, Mr. Chairman.

The next area of the act to discuss is registration.

Sections 161 to 173 set out the procedures and requirements for the registration of a loan, corporation or trust company. These include the usual information one might expect such as the recent financial statement, the appointment of Ontario agents where the corporation is extraprovincial, location of the head office, the term of the certificate of registry and similar matters.

2:10 p.m.

The minister may direct that a corporation be admitted to registry on terms and conditions, and it is an offence to transact or undertake business in contravention of any such terms or conditions.

An extraprovincial trust company may not be registered unless there is a public necessity for it in the locality in which it proposes to do business and unless the registrar is satisfied the applicant will command the confidence of the public, and that public convenience and advantage will be promoted by the granting of the registration. This is the same test as applies to the initial registration of an Ontario trust company.

The act sets out a procedure for challenging the registrar's decision to withhold registration or to suspend, revive or cancel a registration. The decision of the registrar following a hearing and review is subject to appeal to the Divisional Court.

The minister may require any corporation applying for registration to amend any bylaw that is repugnant to the law of Ontario. The unimpaired capital required for the registration of a trust company after January 1, 1968, is \$1 million.

Finally on this point, it is an offence for any director, auditor, officer, servant, employee or agent of a corporation to hold out in any way that the corporation's solvency or financial standing is vouched for by the registrar.

Are there any questions in that area?

The next section is unregistered corporations. Sections 174 to 177 deal with unregistered corporations and prohibit them from carrying on the business of a loan corporation or other trust company.

No one, except registrants under the Loan and Trust Corporations Act or the Insurance Act can assume or use a name in Ontario that includes any of the words "loan," "mortgage," "trust," or "guarantee," in combination with the words "corporation," "company," "association," "limited," or "incorporated," unless it was part of a corporate name of a corporation incorporated under Ontario law or an act of the Parliament of Canada before July 1, 1900.

These provisions are designed to control persons who might otherwise pass themselves off as being registrants under the act.

Are there any questions about unregistered companies?

Mr. T. P. Reid: Has this been a problem?

Mr. Thompson: We find it repeats itself about annually. We are currently in the process of prosecuting somebody to get out of the jurisdiction. Last year we had another one coming over from Detroit, trying to carrying on business without registration under the act.

It is one of the features of the act that the control mechanism of getting the unregistered corporations out of the province is under the provincial Loan and Trust Corporations Act, so it is another little feature we have.

Mr. T. P. Reid: Can they operate until you have prosecuted them and there has been a court decision?

Mr. Thompson: No, not according to us. We go in and close them up.

Mr. T. P. Reid: Is that usually sufficient or do they go to court and--

Mr. Thompson: Usually we can get them out pretty fast by explaining the situation.

Mr. T. P. Reid: What is "pretty fast"?

Mr. Thompson: Within days of us finding out that somebody is operating here; it is usually by way of an advertisement in the newspaper, something along this line.

Mr. T. P. Reid: What happens to the depositors' deposits in that case?

Mr. Thompson: That is the reason we jump very quickly on it because there is no protection.

Mr. T. P. Reid: But suppose I open the Elgie Trust and Loan Corp. or--

The Vice-Chairman: No, It would be the Reid.

Mr. T. P. Reid: Let us say the Rosenberg Trust and Loan Corp. or take a name out of the air. I am offering guaranteed income certificates or whatever at 14 per cent. Presumably I could have taken in a few thousand dollars by the time you catch up to me. Is there a provision for the depositors to get their money back?

Mr. Thompson: No, there is not. There is no Canada Deposit Insurance Corp. coverage or anything.

Mr. T. P. Reid: Obviously they are not covered under the Canada Deposit Insurance Corp.

Mr. Thompson: Right.

Mr. T. P. Reid: So what happens? Are they just out of luck, caveat emptor?

Mr. Thompson: Yes, they are.

Mr. T. P. Reid: I do not recall that being in the white paper. Is there going to be some provision in the legislation to require that these people, if found to be operating as unregistered and unlicensed, have to repay these moneys?

It goes back to what was argued where somebody puts up "trust company" or "loan and trust company" and people think they are licensed and they flock in, or maybe dribble in, whatever. How many people get hurt by this?

Mr. Thompson: We do not have knowledge of anyone yet, but as I say, we have to move very quickly. Because the public simply do not have any protection on that, we go in very quickly and close them down.

To provide some form of protection, you have to face the issue of whether or not you are almost encouraging people to come in here and take a run and run out.

Hon. Mr. Elgie: If anybody puts up a sign for the day, whatever they take in should be guaranteed. With no registration, no accountability, no responsibility to anybody, no public involvement, you are really guaranteeing fraudulent activity, are you not? Is that what you are proposing?

Mr. T. P. Reid: From what Mr. Thompson says it is not a problem that people are coming in and depositing large sums of money and then finding out within a matter of days--I do not want to correct anybody, but we did not find out what certain other people were doing over a long course of time.

Presumably somebody could be walking down the street, go in to Mercantile Trust and say: "Oh, gee, look. They are offering 16 per cent and the others are offering only 15. I will put my \$10,000 in here." Obviously they lose that money. Obviously that has not happened. Has that happened?

Mr. Thompson: No. We have no knowledge of anybody ever losing any money on that, but it is something that we do have to be on guard against continually.

Mr. T. P. Reid: Do you have, or will you have under the proposed amendment, the authority to prosecute those people to recover those funds?

Mr. Thompson: No, we do not.

Mr. T. P. Reid: Should you have that?

Mr. Thompson: We could take it under advisement. I would weigh it with the capability that we might have to recover it successfully. The whole thing is geared as strictly an enforcement

problem now, but it could be a problem. It could be a problem more in newspaper advertisements than anywhere else.

Mr. Crosbie: There is a slightly different aspect to the same problem, and we see it partly as a problem of public education and partly a requirement that could be placed on a trust or loan institution, and that is, we feel that better evidence of the nature of the guarantee or of the insurance coverage on the deposit is necessary. Part of the public education program would encourage people to look for, some place in the trust company, that certificate saying they are a member of the Canada Deposit Insurance Corp. system.

I know that does not directly deal with your problem, but it is another approach to the same concern.

Mr. T. P. Reid: We always have the problem of how far we go in protecting the public, but it really translates back. When we say "a trust company," people tend to think that means a whole lot of things, whether legally or otherwise, and it seems to me there is a potential there for places, particularly outside of Toronto, where your people may not be aware that somebody could get in and get out of the business in a hell of a hurry.

Let us take Windsor. Somebody comes across and opens something called "Fidelity Trust." They could be operating for some time without your knowledge and by the time you get there and close them up, they could have taken in a few thousand dollars or more.

2:20 p.m.

The minister will recall that even after Crown Trust and others were seized, the people were still pushing the security guards out of the way to make deposits because the interest rates were higher.

Hon. Mr. Elgie: I guess the issue is if somebody walked down the street with a sign saying: "The Reid Trust Co. I have the Brooklyn Bridge to sell"--

Mr. Breithaupt: "The end is near."

Hon. Mr. Elgie: --and somebody buys it from you, who takes responsibility for that? Are you saying that the Canada Deposit Insurance Corp. should accept the responsibility?

Mr. T. P. Reid: I am not saying that. I am saying perhaps we or you should have the authority to prosecute to get the funds back. From what Mr. Thompson has told me, you can close them up, but those people who walked in that door and made a deposit or bought a certificate that anybody can print in a back room, have no recourse in getting their funds back. Maybe it is not a large problem.

Hon. Mr. Elgie: There would be criminal investigations and investigations for contraventions for failing to register.

Then there would be the actions brought by the individuals to recover funds.

Mr. T. P. Reid: Yes, but you always get into that. If I deposited \$1,000, the lawyers are going to charge me \$5,000 to get it back--with respect to all the legal minds around the table.

Hon. Mr. Elgie: It would be good to hear various people's positions on that issue. It is a difficult one.

The Vice-Chairman: Any further questions? Mr. Crosbie.

Mr. Crosbie: The next sections on investments deal with the investment powers and limitations of loan corporations and trust companies. These are particularly complex provisions of the act and may require more explanation than we have been giving you so far on various sections. I have, therefore, asked Mr. Thompson, the registrar of loan and trust corporations, to explain these provisions to the committee. He will be better able to handle your questions.

Mr. Thompson: The provisions we are dealing with are set out in sections 178 to 191 of the act. If I can, as I hope, leave with the committee an understanding of what is meant by quality controls and quantum controls in the basket clause, I would think I would be very successful indeed. Every time you refer to these provisions you really have to reread them and look at them again.

By and large, the quality control, and by that I mean the type of investment that can be made by a registered loan and trust corporation, is defined in section 178 of the act, which provides a list or almost a menu of approved types of investments with various qualifications as to each particular one. If we refer to the most common types of investments, generally the greatest one in proportion to asset investment is mortgages. The test there is three quarters of the value of the real estate to which the mortgage relates.

Any other mortgage against the property that may have a prior claim must be taken into account in arriving at the maximum investment limit. It is permissible to lend in excess of that amount if the excess is insured by either a mortgage with the Canada Mortgage and Housing Corp. or guaranteed by them, or a mortgage by a licensed insurance company in Canada--the one remaining being the Mortgage Insurance Co. of Canada.

Other types of authorized investments are bonds issued or guaranteed by the government of Canada, a province of Canada or a municipality and bonds of any company that are secured by a mortgage to a trust company upon real estate or other assets of the company.

Common shares are authorized if the company has a five-year dividend payment or earning record of at least four per cent of the amount that those shares have carried on the books of the company issuing the security.

Similarly with preferred shares, these are allowed if they

in turn have a dividend payment record on the preference shares of some five years or if the common shares of the company are authorized investments.

Corporate bonds or debentures are allowed if issued or guaranteed by a company whose common or preferred shares are authorized investments or whose earnings have met requirements stated in the act. Guaranteed investment certificates are also allowed if the preferred or common shares of the corporation issuing the same are, in turn, authorized investments.

The act also authorizes certain other investments which are, however, seldom used by existing trust or loan corporations. These authorized investments include the International Bank for Reconstruction and Development, federal and provincial subsidy bonds and assignment of life insurance policies--that is, the cash paid-up value thereon.

I would now like to comment on a few other classes of investment that are currently of some significance.

The legislation permits the financing of transportation equipment for use on railways or public highways where the equipment is leased and title documents are assigned to a trustee. The intent of this section does not extend to commercial or financial leasing as that term is generally used. At this time, commercial leasing must be accommodated in the investment basket. More about that later.

Real estate: Investment in real estate is possible, either directly in the trust companies or through the medium of a real estate subsidiary. The act and regulations place restrictions on such investments, however. Up to 10 per cent of the total assets of a corporation may be invested in income-producing real estate that meets restrictive standards and provided no one investment is greater than two per cent of the total assets of the trust company.

Income-producing real estate not meeting the restrictive standards I referred to may be acquired again as a basket investment. Such investments are limited in total to the available capacity in the investment basket and individually may not exceed one per cent of the trust company's total assets.

All the real estate investments I have mentioned may be made by the corporation alone or jointly with another trust company or a licensed insurance company. Finally, a corporation may form a subsidiary to invest in real estate. Investments in real estate by the subsidiary are not restricted as to their nature, but individual investments are limited to two per cent of the total assets of the trust company.

Mr. T. P. Reid: It could not be clearer.

Mr. Thompson: In turn, the trust corporation's investment in a subsidiary is limited to 10 per cent of its total assets.

Subsidiaries: Since 1970, trust companies have been able to

use their own funds to acquire shares of subsidiaries, provided the functions carried out fall within certain categories. Extensive regulations under the act govern this. They may also make advances out of their own and borrowed funds to such subsidiaries.

Subsidiaries permitted are real estate companies, foreign loan or trust companies, and companies created to carry out only activities reasonably ancillary to the business of a loan or trust corporation. A trust company may own a loan corporation and vice versa. Special permission is required in respect of ancillary companies and for loan corporations acquiring a trust company. However, operating a subsidiary is otherwise a matter of right.

The Vice-Chairman: Is this an appropriate time, Mr. Thompson, for a question on what you have said?

Mr. T. P. Reid: I presume there is not going to be a test on this later.

The Vice-Chairman: No, but Mr. Renwick indicated that he had some questions.

Mr. Thompson: Yes, I think this is an appropriate time for questions. I was just going to discuss the basket clause next.

Mr. T. P. Reid: I do not know how Mr. Renwick could have a question. It is crystal clear.

The Vice-Chairman: Mr. Reid, I must say your perspicacity--no, I will not continue. Go ahead.

2:30 p.m.

Mr. Thompson: The regulations governing subsidiaries are regulations 593 and 597, wherein the detailed requirements respecting their operation are contained. Important are the provisions for valuing subsidiaries on the accounting records of the parent or the trust company and the provisions for undertakings to allow the registrar to examine subsidiaries. Corporations must maintain at least 51 per cent control over subsidiaries, except with respect to real estate companies; and there will be more on that particular point in the white paper.

Quantum limits prevail on the size of the investment in an ancillary subsidiary and a real estate subsidiary. It is limited to five per cent and 10 per cent, respectively, of the total assets of the corporation.

If I can touch on the basket clause--and we really dealt with the quality of investments at this stage--the basket clause is an additional provision that permits trust companies to make investments that are not specifically enumerated under the authorized investments provisions. This provision is, as I have said, referred to as the basket. Initially the basket limit is equivalent to 15 per cent of the trust company's capital base, but this limit may be expanded to seven per cent of total assets.

Historically most corporations made little use of the basket clause, reserving it for the occasional bond or stock investment that did not quite fit the eligible investment test. In the early 1970s the trust industry commenced offering consumer loans, which, not being specifically authorized, were placed in the basket. More recently commercial lending has been introduced as the basket item.

That, I think, illustrates the use of the basket clause. It does provide some investment flexibility to a corporation.

The Vice-Chairman: Mr. Reid has a question. I wonder, Mr. Renwick, if you want to proceed with yours at this time.

Mr. Renwick: I would defer to Mr. Reid if he has a question. After all, they hold more seats in the House than we do.

The Vice-Chairman: The politeness here today is immense.

Mr. T. P. Reid: Mr. Thompson, just to help me out, would it be possible for you to tell me what is excluded? You have gone through almost everything conceivable. The basket clause seems to be the catchall; if it is not included in the regulations and under sections 181, 183 and so on, then you can do almost anything else you want and stick it under the basket clause. Is it possible to help me out by telling me what is excluded?

Mr. Thompson: Possibly the best way to look at it is the common share investment. If you are looking at that, you cannot simply say that a share issued under the aegis of the Toronto Stock Exchange is a permissible investment.

Mr. T. P. Reid: But mutual funds are.

Mr. Thompson: No, they can be offered by the company by a subsidiary route. You have to look at that test. You have to see that it has a dividend earning record of at least five continuous years, so obviously anything that does not have that is excluded and is not an authorized investment for a trust company. You are really looking at the safety of that type of investment.

In reading that clause, a corporation may have paid dividends in four out of the five years, but it would still be excluded as an investment for a trust company.

Mr. T. P. Reid: But Bell Canada, for instance, would be--

Mr. Thompson: Yes.

Mr. T. P. Reid: How about preferred shares?

Mr. Thompson: The preferred share test is basically the same. If there has been any interruption in the dividend paying obligation or record of that company and it does not meet a certain proportion of how the capital of that company is carried on its base, it is excluded. You are getting into a real blue-chip type of security.

Problems also come up where you have amalgamations of two companies and if securities are melded together in one, particularly if one of the companies had a dividend-earning record and one did not, and all of these things. There is not a big market really for your blue-chip security.

Mr. T. P. Reid: But a loan and trust company can invest in almost anything from real estate to common shares if they meet the requirements of the five-year dividend.

Mr. Thompson: Yes.

Mr. T. P. Reid: So there really is not any kind of financial or commercial interest that a loan and trust company cannot invest in.

Mr. Thompson: Yes, providing--this is what I call the quality--the quality tests are met, so they have a broad range of what they might invest in, another corporation's shares, stocks, or mortgages, etc. Then they have the flexibility of investment under the basket clause. Now we are ready to move into the controls, which in another way--

Mr. T. P. Reid: Restrict them to a certain degree.

Mr. Thompson: --restrict them as to the percentage of their own assets they can put in any one investment. In other words, they cannot put all their eggs in one basket. You are trying to diversify and have a broad, diversified, balanced portfolio.

Mr. T. P. Reid: In your opinion, is this restrictive enough, both in terms of quality and quantity? Maybe I should wait till you go through the quantum aspects, but is this restrictive enough?

Mr. Thompson: Oh, yes, I think it is. The broad intent of the legislation is there.

Mr. T. P. Reid: Is the enforcement of it adequate?

Mr. Thompson: It is part of the regulatory process. There are those who say that you do not need this type of list or menu. But basically as part of the regulatory process in checking assets on the corporation's filing, if you have it and you have references, then you have a source of material that you can refer to through the Toronto Stock Exchange or the corporation directly as to their dividend-earning record, etc., to see that they are qualified. That is all part of the process of examination.

The biggest problem you have on that is if it is broad enough, because some investment opportunities are lost. One of the problems that companies do face is trying to get their money out for investment purposes.

Mr. T. P. Reid: I do not know if this is germane, but let us take a hypothetical case where somebody has real estate in particular and they inflate the value and say: "All right. I

bought this for \$1 million but inflation has gone up 10 per cent, or the building across the street rose by 15 per cent, so my building is now worth \$1.15 million." Is that caught in here?

Mr. Thompson: Yes, it would be, to the extent that in common shares you have the TSE to rely on, the corporation's own published reports and the dividend-earning records. In the case of real estate, you have to rely on the position that the mortgage, if it is a mortgage, sits in, the appraisal and the evidence you have with respect to that particular value.

2:40 p.m.

Mr. Renwick: Mr. Chairman, I will try to make my question very simple. I think it is absolutely essential for the committee to have a readable piece of paper explaining to us the powers of loan corporations and trust corporations, particularly trust corporations, to invest in any kind of real estate investment, be it by way of mortgage, direct investment or other investment. I say that because basically the reason we are here is the problems which arose with the investment decisions of companies with respect to real estate. I cannot conceive this committee would be engaged in this kind of ritual unless those problems had arisen.

We might well have seen an amended Loan and Trust Corporations Act introduced directly into the assembly for discussion and debate, because of the length of time from the select committee's report and the delay in getting amendments in and then the changes which took place and so on. It was up for review.

I realize now that the select committee did not look into this question about investment powers at all, let alone investment powers in relation to real estate, including mortgages. There is nobody on this committee who will be able to read the sections relating to the investments and understand them in a business sense.

I am not asking for research. I am asking the ministry and the multitude of advisers it has had on this problem to put down on a half a dozen sheets of paper what exactly are the powers and limitations with respect to investment in real estate or in mortgages, or in any other kind of investment related to real estate by loan and trust corporations. If we do not focus in on that question, we will not be fulfilling what I consider to be our responsibility, to deal with this vexed question of valuation of real estate investments.

It is relatively easy. Any corporate lawyer can skate through most of the provisions in here related to preferred share and common share investments to find out whether or not the rules apply. But the vexed question of the mortgage and real estate investments is the key to the problem.

I hope that somewhere, somehow, the ministry, its experts or the multitude of experts who have been involved in the Cadillac Fairview operation can give us some indication of what the problem

was that led the ministry to blow the whistle when it did, related not to questions of guilt or wrongdoing or anything else, but simply on the basis of what it was in this statute that led to your blowing the whistle. That relates to value, investments in real estate, investments in mortgages, charges or hypothecs and the whole definition of improved real estate.

With great respect to my colleagues on the other committee, including myself and Jim Taylor, I do not think we were aware of it when we said in our report in 1975, "The committee was of the opinion that in view of the highly technical nature of the investment powers sections and of the considerable uniformity that exists between them and the comparable sections of the federal acts and the acts of other provinces, it would serve no useful purpose for the committee to review the details in sections 151 and 153," which are whatever they are, 178(1), whatever the appropriate reference is.

I think we have to not get bogged down in each and every one of these investment powers, but we have to understand what a member of the board of directors or an executive officer in a trust company says to himself when he says, "Can we invest funds in real estate?" What is the living, breathing world in which people operate, apart from lawyers and accountants, in deciding on those investments?

There must be some way to translate into English what these provisions say, and there must be some way in which we can have definitive statements about alternative methods of value so that we can make at least some comment on the question of how you determine value--what it means, what the guidelines are, what kinds of judgements were made that were approved and what judgements were made that were disapproved--without getting into questions of whether somebody was right or wrong or whether there was an offence or otherwise on the matter.

Making the assumption that business transactions take place in the real world, what were they doing in the various companies that caused the problem and what can we do in this legislation to clarify the problem so it will not repeat itself with respect to investments in real estate, which are the great bulk of the financial intermediary operation that the trust companies are engaged in?

I am not suggesting there are not other ways that people can skate in there, but this is why we are here and, with great regret on my part, I think we have to understand it. I am not particularly interested in understanding it; certainly there are no votes in Riverdale in my understanding it. But I think this is what we have to do, and I need something on paper, otherwise we will just be bamboozled, we will not understand it and we will get immersed in these immensely technical questions that none of us is competent to deal with.

The Vice-Chairman: Thank you, Mr. Renwick. Perhaps, Mr. Crosbie, you might care to respond.

Mr. Crosbie: Yes, Mr. Chairman. We will certainly do our best to provide that information.

I think it is safe to say that if we are talking about direct investment in real estate--in the form of mortgages, for example--there is a whole series of issues there that you have raised that I think can be discussed in fairly intelligent and clear terms. As soon as you move away from that, for example, and you start investing in the shares of a company that in turn invests in real estate, you move the complexity one notch away. There are more difficulties the further you go away from direct investment in real estate.

But I hear what you are saying, and we will do our best to try to make it as clear as we can.

Mr. Renwick: My colleague the member for Ottawa Centre (Mr. Cassidy) and my colleague the member for Kitchener (Mr. Breithaupt), followed by the member for Brantford (Mr. Gillies), followed this morning on the question of directors. If you are a director of a company, it does not automatically endow you with the capacity to understand the Loan and Trust Corporations Act. If you are sitting and expecting people to exercise judgement with respect to real estate investment, they must be able somehow or other by way of something other than intuitive judgement, by way of a checklist if necessary, to say, "These are the things I have to be satisfied with so that I can ask the mortgage investment manager of this company who is recommending this investment to us, 'Does it fit?'"

That is the responsibility, and I just do not think there is any businessman who is going to put up with the gobbledegook that is in here. I say this with great respect; I know the legal jargon is necessary to categorize these things. But there must be in some trust company somewhere in Ontario a clear indication of what directors are supposed to make decisions about, or do they simply rely on the fellow at the head of the department? If so, what does the head of the department say on the question of whether they are within the law in making this real estate investment?

2:50 p.m.

I think it would be important, without going on at any length, for us not to disperse the activities of this committee away from what to me appears to be the key issue, the question of the investments in real estate, investments of all kinds, directly or indirectly, by loan and trust corporations.

What went wrong, what caused the problem? What made the people involved in the investigations think that was an acceptable way to operate and what made the ministry say it is not an acceptable way to operate and that it offends some situations? I have not seen anything yet that has come to grips with these questions.

I may not have read all of the fine print in the white paper or in the proposals for the internal reorganization of the

ministry, but I think we have to understand that problem of real estate investments and valuations.

Hon. Mr. Elgie: Certainly we will explore the possibility of providing that information with the proviso that we will have to get advice of legal counsel. Some of these very issues are issues that are before the courts and there has been much material tabled that may indeed answer--

Mr. Renwick: Oh, come on. With great respect, minister, I tried carefully to say that I am not trying to intrude on police investigations, court actions or anything else. I want to know what the ministry thinks is a legitimate investment in real estate, what are the limitations on a company that wants to invest in real estate, what are the valuation criteria which the ministry accepts and what are the alternative valuation criteria which are in dispute.

Hon. Mr. Elgie: I am not getting in a debate with you. I simply said, as you would expect me to say, that we will discuss it with legal counsel and we will endeavour to provide the information for you within the limits that they may recommend to us. I will be glad to discuss it with you once we have had those discussions.

Mr. Renwick: You have four or five management consultant firms involved in advising you. You have 16 or 17 Ontario-incorporated trust companies. All of them must have written down somewhere the guidelines by which they operate. If we have to solve the problem, that is all right, dump the problem on us, I do not mind that; but we cannot go back into the assembly without some fairly definitive questions related to real estate investments and valuation policies and guidelines. If you want to tell us that nobody knows what they are--

Hon. Mr. Elgie: I did not say that.

Mr. Renwick: I am not saying that. I am leaving it open to you. I just do not want it to end up that somehow or other this information is not available to us. It is either available to us or you tell us that you cannot provide it to us because you do not know what it is. Then you leave us with the problem and the collective wisdom of this committee, which is, of course, superlative, would be able to come to the kinds of recommendations that would be important to us.

Mr. Boudria: I want to get back to some of the things that were referred to earlier in the basket clause. I am trying to refer to some things I read before. I know that a director cannot borrow money from his or her own trust company. That is correct, is it?

Mr. Thompson: That is correct.

Mr. Boudria: Would I be correct, though, in saying that in the cases we are dealing with, the three famous companies in question, there had been such loans, maybe not to the same

individual but to each other in order to assist in the purchase of certain properties? Can we go through that in reading some of this documentation?

In other words, was that basket clause used for personal loans to a friend of the owner of a trust company for the purpose of acquiring properties together with the owner of that same trust company?

Mr. Thompson: I would say no, it was not utilized or abused to that extent. I would say that it was much more sophisticated than that.

The Vice-Chairman: Are there any further questions?

Mr. T. P. Reid: Mr. Thompson, I have a little problem with my friend Mr. Renwick in restricting this whole thing just to mortgages and real estate. It seems to me there is a plethora of investments that can be made there. If somebody can find his way around the mortgage and real estate aspect, he may find some way around all the other host of things. I just wonder where we draw the line.

I realize we are dealing with a particular problem, but if we are going to amend the act, it seems to me we do not want to be back here a year from now saying we now have problems we did not consider or the ministry did not consider.

I wonder if it is possible to give us something that is understandable to a boy from Rainy River, we will use the lowest common denominator I can think of, on all of the investments.

Second, Mr. Thompson mentions that when it came to the enforcement or regulation, within the ministry or within that section of the ministry there was a checklist of things that could be invested in that you were able to write down and say if these are common shares or preferred shares or mortgages or mutual funds--whatever. There is some kind of checklist you have, to go down this list and compare what they have said to the value over here.

Can we have a copy of that checklist, or did I misunderstand you?

Mr. Thompson: No, I did not mean it to that extent. What I was saying was every company must file a return at the year-end, really after the event, which describes what they have invested in during the year and what they have at the end of the year.

That is broken down into segments such as common shares, mortgages, etc. I was making the point, which in the case of common shares is relatively easy to ascertain, whether most of them, Bell Canada--

Mr. T. P. Reid: The TSE or whatever--

Mr. Thompson: Yes, right. You have a relatively quick way of ascertaining it. In the other areas you do not, necessarily.

Mr. T. P. Reid: It might be helpful to have a copy of the return they must file.

Mr. Thompson: We thought we had set this out relatively clearly. Obviously, we have not. We will be glad to have another go at it and try to give examples, perhaps, that might be better.

Mr. T. P. Reid: That might be helpful.

Mr. Thompson: We will try to work it in. Some of the proposals in the white paper lead us directly into this area.

Mr. Breithaupt: Mr. Chairman, it may be that, as a result of the studies that have occurred with respect to these three trust companies, there would be available to us perhaps a copy of the manual of administration or the policy directives that dealt with investments in any one of the three. If those several pages were available to show at least in principle how one company handled what should be done, that might resolve the question Mr. Renwick had. It could set out how the policies of a company are developed or printed. Whether they are exactly followed or not is another story.

Perhaps it would be a helpful way of getting that material, if we could see at least how the manual for a company said something should be done, what procedure should be followed and how various securities and other interests were considered for investment or other purposes.

Hon. Mr. Elgie: We will certainly look again and see if that is something that is possible.

Mr. J. A. Taylor: I surmise what you are trying to do is get at the criteria for evaluation of investments?

Mr. Renwick: Yes. You are knowledgeable in the area. I am not knowledgeable in the area. I do not understand what the word "value" means when it comes to mortgages, which are such a large part of the investment world of trust companies.

Mr. J. A. Taylor: I am not questioning that. I am trying to clarify what you are seeking--

3 p.m.

Mr. Renwick: That is why I am glad you interject. You are knowledgeable about it. I do not know how, without oversimplifying it, you arrive at a property's value, in order to determine 75 per cent of the value for the purpose of authorizing the investment involved in it. That major thing triggered the problem facing us.

Cadillac Fairview Corp. Ltd. was in the real estate business, valuing the properties they were going to sell on the market. The company was doing this, with all the problems involved in selling a large block of investments, selling it at one price and having it, in the fashionable language of the day, flipped twice on a valuation judgement.

Assuming businessmen were involved, they were making decisions about it. Without putting any aspersions on anybody, that immediately triggered a massive response by the government. I would like to understand what problems led to that response and what would not have triggered that response.

So far as the companies were subject to regulation, in each of those cases somebody had to say, "That is the value we are going to place on it."

What are the disputed types of value? I do not understand them, but there are various types, and obviously, you dispute certain of these methods. That is one element I want to see on the table.

I am not trying to restrict ourselves to that. I have said it is one of the major parts of a trust company's investment portfolio, as we know it. They may invest in common shares, preferred shares or in bonds, debentures and so on, all of which are legitimate. The select committee did not venture into this area, yet this area seemed to trigger the problem.

Mr. J. A. Taylor: I wanted to know what to expect when it came forward, and I wanted to clear my mind as to what your expectations were.

The Vice-Chairman: The minister has indicated they will attempt, to the extent it is humanly possible, to answer those questions.

Hon. Mr. Elgie: After discussions with counsel.

Mr. Thompson: Quantum limitations: These are additional to the limitations that appear in the individual sections of the act. I will enumerate these as follows:

A. Trust companies must ensure that 50 per cent of guaranteed trust funds--the pool of the depositors' money, the guaranteed investment certificate money--are invested in such securities as are listed in section 26 of the Trustee Act. You have a different treatment for that section of money. In practical terms, companies fulfil this obligation by holding first mortgages, government bonds and balances with Canadian banks.

B. Investments in shares and debentures are limited to 20 per cent of the shares or debentures of any one issuer. To put this another way, the trust company should be a passive investor by investing for security and profit, not for the purposes of exercising control over other corporations.

C. Collectively, investments in common shares cannot exceed 25 per cent of a corporation's total assets.

D. There are also restrictions applicable to any one security and to related parties. In essence, investments in any one security or any one company or group of related companies are limited to 15 per cent of the corporation's capital base with the exception that investments for a term of less than one year are

limited to the aggregate of 20 per cent of the capital base and 2.5 per cent of the borrowed funds.

I would like to make very short reference to the owning of real estate for the trust company's own use. Simply put, the act permits a corporation to acquire real estate for office premises up to 35 per cent of its capital base. That puts a cap on the amount of money the corporation can take out of its capital to own a building to house itself and display itself to the world.

Those, briefly, are the investment provisions of the act.

Mr. T. P. Reid: This is a somewhat facetious remark, but what Mr. Thompson has just gone through reminds me of the ethnic makeup of Toronto. It is five per cent Indian, 10 per cent Pakistani, 40 per cent Italian and so forth, and when you add it all up it comes to a population in Toronto of about 20 million people. The two per cent who are Irish represent quality rather than quantity, but we will not go into that.

But has anybody added up all the investments these companies are entitled to hold? Does it come to 100 per cent, 150 per cent, 175 per cent or 200 per cent? Or is it simply the basket of eggs again? Is it simply that if we restrict each separate investment type to a relatively small percentage, everything cannot go wrong at once, presumably?

Mr. Crosbie: Yes, there is something to that. We want diversification in investments, but it sets a range. It is trying to spell out that if you are investing in a particular security, you have to examine the quality of it. If you can invest in it, you have to look at your own portfolio to see if you fit within the quantum limitations the act imposes. It is a very difficult area for investment people to work in.

Mr. T. P. Reid: My overly simplistic and very naive question is this: A loan and trust company then could not invest in each area so that it was overinvested relative to the deposits and assets it had?

Mr. Crosbie: That would be impossible.

Mr. T. P. Reid: It could not have 22.5 per cent in mortgages, 15 per cent in common shares, another 10 per cent in something else. In fact it would be strictly under these provisions as to the percentages. But when you add up all the percentages it has 200 per cent of the deposits it holds.

Hon. Mr. Elgie: It provides some range, and each company selects within that range where to invest the deposit money it has.

Mr. Crosbie: To put that another way, you are not taking 100 per cent of investment and dividing it into parcels that total 100. You are taking a range of investments and saying that for this range you may go to 30 per cent, 25 per cent or whatever it is. Before you could reach the maximum in every range, you would have exhausted the money you had available to invest.

Mr. T. P. Reid: The problem we are here for, presumably, is that some companies invested well over the range--

Mr. Crosbie: That is a physical possibility. However, if you say you can only have 20 per cent of a certain type of investment and a company puts 30 per cent of its money in that investment, then it is in violation of the investment controls of the act.

The Vice-Chairman: Thank you, Mr. Thompson. Mr. Crosbie, I guess you will be--

Mr. Crosbie: I would like to return to running through the act. As it is, the section is on returns. Sections 194 to 196 outline certain statements and returns that must be made by loan corporations and by trust companies.

3:10 p.m.

Both loan corporations and trust companies are required to file a semi-annual return, which is a statement showing the changes in investments and loans during the preceding half year.

They must also file a quarterly return, which is a statement showing the amount of cash and securities being maintained, as required by the act, and the amount of deposits and guaranteed investments or obligations payable in less than 100 days. These returns, you may recall, relate back to the requirement that they have this amount of money in respect of investments or obligations payable in less than 100 days.

In addition, the corporations are required to file an annual statement of the financial conditions and affairs of the corporation. There must be attached to the annual statement a copy of the auditor's report which, as you may recall, is required to contain the auditor's comments on the adequacy of the annual statement. The annual statement must be adopted by the directors of the corporation and they must certify to that effect.

There are provisions for extending the time for filing an annual statement and for imposing a penalty for default in the filing. The corporations are also required to provide the registrar with a copy of any financial statement furnished to the shareholders.

Those are the comments on returns. Are there any questions on that part?

Mr. T. P. Reid: Just a general one. Is it possible, again, for us to have a copy of the return that has to be filed?

Mr. Thompson: What we call a statement blank? Yes. Certainly.

Mr. T. P. Reid: As I understand, Mr. Crosbie said that these are all audited statements, so that some--

Mr. Thompson: No.

Mr. T. P. Reid: They are not necessarily audited statements? Is the annual statement audited or not?

Mr. Thompson: The annual statement is sworn by officers of the company. It is accompanied by the auditor's statement. There is a separate statement by the auditor.

Mr. T. P. Reid: How would the two differ, or would they differ?

Mr. Thompson: They should not.

Mr. T. P. Reid: Do they? Have they?

Mr. Thompson: I beg your pardon?

Mr. T. P. Reid: We all have in our minds why we are here. Is it a fair presumption that the audited statements by a chartered accountancy firm were the same as the statements signed by the officers of the company in the firms that brought us to this point?

Mr. Thompson: There are two different statements. It is important that we establish that. The auditor does complete his audit. He is basically completing it for the shareholders of the corporation.

Mr. T. P. Reid: Saying that the information he has received--

Mr. Thompson: Yes, and that he has completed his audit. That is one document.

On the other side, we have a requirement for an annual return and that annual return will give the breakdown of a lot of investments which would not necessarily appear in the auditor's report. The auditor's report may show mortgages or something. The return to us would show the individual mortgages, stocks and bonds; we would have the details of the portfolio.

Mr. T. P. Reid: You would have them listed.

Mr. Thompson: Yes. There are two different documents serving really two different purposes.

The next group of sections, 197 to 202, just deals with a number of miscellaneous matters such as procedures that protect small deposits from seizure by third parties and facilitate the transfer of small deposits or debentures on the death of the owner.

There are also provisions that deal with the service of notice on a corporation and with the application of the winding-up provisions of part VI of the Corporations Act.

Are there any questions on that?

Mr. T. P. Reid: On something I read recently, under the Bank Act there is a difference on the \$300 figure, as I recall, in

terms of bankruptcy and what not. Is there not a difference in the amount?

The argument was that presumably you could go to all 18 trust companies and make deposits of \$300 that could not be seized and under the Bank Act the whole thing can be seized, or a much lesser amount. Is there any particular reason why there is that differential?

Mr. Thompson: I am sure there is a paper submitted to this committee on that point. I think I have seen it.

Mr. T. P. Reid: Maybe that is where I got it.

Mr. Thompson: The Bank Act has never legislated in that area. The Loan and Trust Corporations Act did many years ago, and the purpose of it was simply for the protection of the small depositor who might have all his savings garnisheed, to leave some money for him in the account.

Mr. T. P. Reid: To get out of the country.

Mr. Thompson: Not far with \$300.

Mr. Crosbie: The next is offences and penalties, sections 203 to 205, outlining certain offences and penalties and directions that may occur under the act. Section 203 creates an offence for "every director, manager, auditor, officer, agent, collector, servant or employee of a corporation who refuses or neglects to make any proper entry in any book of record, entry or account of the corporation," or who refuses to exhibit them or allow them to be inspected or audited or copied as required by the act.

Under section 204, the registrar may apply to the High Court for an order directing any person or corporation to comply with the act or regulations or any order made under the act. The court decision is subject to appeal.

Section 205 establishes a penalty of not more than \$25,000 for any person and not more than \$100,000 for any corporation in respect of a conviction for knowingly furnishing false information, failing to comply with an order or direction, or contravening the act or regulations.

The penalty for carrying on business without being registered is not more than \$100,000.

The authority granted to the registrar under section 204 was part of the 1982 amendments to the act. Prior to those amendments, the registrar did not have authority to apply to the courts for orders compelling compliance.

Are there any questions on those sections?

Mr. Renwick: Have you any statistical or other information on the extent to which in the last five or 10 years there have been offences which have been prosecuted under the act

or charges laid, and the result of those charges under the various categories of offences which are listed, but having particular regard to contravening any provision of this act or the regulations made under this act?

Mr. Thompson: The vast majority of those sections were brought in on December 21, 1982. Up to that time, there was the effect of having a court order, a forced compliance. Many of the violations of the act were simply infractions without sanction; administratively perhaps, but not--

Mr. Renwick: Are you saying that under the act before 1982 there were no contraventions which led to informations being laid and prosecutions being undertaken?

Mr. Thompson: I have no recollection.

Mr. Renwick: None at all?

Mr. Thompson: No.

Hon. Mr. Elgie: They were mainly administrative measures.

Mr. Thompson: Oh yes, carrying on business without a licence.

Mr. Renwick: I understand that. I would like to know whether, in regard to the offences and penalties section as it existed up to the 1982 amendment, there were any reasons why there was any use of those provisions for enforcement purposes.

Hon. Mr. Elgie: We can review that.

Mr. Renwick: There must be some indication somewhere as to whether you ever got around to laying any charges about anything--

Hon. Mr. Elgie: And if any charges were possible; that is the point.

Mr. Renwick: However you want to phrase it; most statutes have an offences and penalties section. All I am asking is, were any charges laid?

Mr. Crosbie: I think during one of your short absences we were discussing the charges that have been laid, almost on an annual basis, against people who were carrying on business without being registered under the act.

3:20 p.m.

Mr. Renwick: I would like to have the statistical information for the 10-year period preceding the 1982 amendment.

The Vice-Chairman: Again, that has been indicated. They will attempt to provide that information and see what they can locate over the--

Mr. Renwick: I am not interested in the names of the persons, but I would like to know if any use been made of the amendments to the offences and penalties section that we passed in 1982. Has any use been made of those for the purpose of laying charges of any kind?

Hon. Mr. Elgie: Or getting court orders and enforcements.

Mr. Renwick: Has any use been made of something called the offences or penalties section, which I read to be sections 203 to 205 inclusive?

Hon. Mr. Elgie: We will certainly look at that.

Mr. Crosbie: Mr. Chairman, I am sure the committee members will be pleased to hear that we have reached the last section of the act, section 206, which provides the regulation-making power in respect of fees, retention of records, disclosure requirements in lending transactions and certain rules in respect of investments. It also covers the commutation of fees and the time for payment of fees.

That would conclude our presentation on the overview of the act.

The Vice-Chairman: Are there any questions to Mr. Crosbie at this point on that portion he has gone through this morning and this afternoon prior to us getting into the actual white paper?

Hon. Mr. Elgie: There is another item. Mr. Cooper will be pleased to explain to the committee how the act is used.

Mr. Crosbie: Mr. Chairman, we thought this might answer one of the areas of the type of questions Mr. Renwick asked about the investments. A lot of what we have said is just so many words and we thought it might be useful to the committee if Mr. Cooper were to run through how the act would affect an actual incorporation and describe the process in a very practical way, rather than use just the theoretical language of the act. This is what we would propose doing now if that meets with the committee's satisfaction.

The Vice-Chairman: I think that might help answer some of the questions that have been raised. I recall Mr. Reid saying this might help a young fellow from the area of Rainy River. I am obviously being facetious, Mr. Reid.

Mr. T. P. Reid: I will change that to the "old fellow."

The Vice-Chairman: All right. Perhaps then, Mr. Cooper, you might proceed with that.

Mr. Cooper: The first heading is: What must the incorporators consider? We will assume we have five people who are fairly affluent individuals. They are aspiring to enter the loan and trust industry and they want to discuss the factors involved in this procedure.

The initial consideration they must determine would be the amount of the capital they have available to capitalize the operation. Profit objectives should be for a long-term growth of the organization and not a fast return on investment. They must also consider the scope of the operations and the expertise of the proposed incorporators. Most importantly, they must have a clear understanding of regulatory involvement and be aware that incorporation is a privilege, not a right and that public necessity and convenience must be served by incorporation.

They should consider, should it be a trust company or a loan corporation? Based on initial consideration, the proposed incorporators must determine whether they should create a trust corporation or a loan corporation. A trust corporation provides financial intermediation plus executorships, trusteeships, including pension trust agencies and investment management. A loan corporation provides financial intermediation plus a limited role as agent to produce fees; fee income, that is.

The power for loan corporations to act as agent--

Mr. J. A. Taylor: Excuse me, do we ask questions as we go along?

The Vice-Chairman: How long will this take? Is it broken into sections?

Mr. Cooper: It is broken into sections.

The Vice-Chairman: Perhaps at the end of each section, Mr. Cooper, you might indicate that you are prepared for questions, as the deputy has done. The first to question at the the next logical break will be Mr. Boudria. Is there anyone else who wants to indicate--

Mr. Crosbie: Have you finished that section yet?

Mr. Cooper: No, there is just another paragraph.

A loan corporation provides financial intermediation, plus a limited role as agent to produce fee income. The power of the loan corporations to act as agents for the transaction of business is not granted through the issuance of letters patent but is a supplementary function applied for and evidenced by order in council.

Mr. Boudria: You refer to incorporation as being a privilege and not a right and you say that a need must be demonstrated in order for the trust company to be established. I am curious to know, how many refusals have there been over the last year or two? Do you frequently refuse applications for trust companies? Are there one or two a year? Are there many?

Mr. Cooper: Quite often what happens is that when somebody comes in and has a discussion, we will go through the various criteria we have--and I will be going into more of them as we go along--and sometimes he will pack up his bags and go away

because he feels he cannot meet the criteria we would be looking for.

Of course, all the registrar can do is recommend; the incorporation itself takes place through order in council. That is why we say it is a privilege rather than a right.

Mr. Boudria: So my question is to the minister, then.

The Vice-Chairman: The question is, how many refusals?

Mr. Boudria: In other words, how many times has somebody applied and there really was not--

The Vice-Chairman: Completed the paperwork, is that what you are asking, Mr. Boudria?

Mr. Boudria: Yes, and there was not the need. We are always talking about demonstrating the need.

Mr. Thompson: I am hazarding a guess here, but it is two or three times a year, I would think. There is a continual discussion. I have been discussing for five years with one group that wants to come in. It is an ongoing process.

Mr. Renwick: In how many cases in fact did an application go before the cabinet with a recommendation to refuse it?

Mr. Thompson: I can clearly recall one or two.

Mr. Boudria: This year?

Mr. Thomspson: No.

Hon. Mr. Elgie: With a recommendation to refuse incorporation?

Mr. Thompson: Yes.

Mr. Renwick: So you can clearly recall situations where everything was completed and the application went forward to the cabinet for incorporation but with a recommendation from the minister to the cabinet that it not be allowed?

Mr. Thompson: In one case the people insisted on going directly to cabinet and they filed a petition for it, which no one supported. They felt they had the right under the legislation, and we said, "Fine." It was not granted.

Mr. Renwick: Leaving aside that one, which would be what I would call a legal aberration, what about one that had been processed in the normal way by knowledgeable counsel through the ministry and had proceeded to the point where everything was done and it went to the cabinet with an adverse recommendation?

Mr. Thompson: I can recall one, in that case.

Hon. Mr. Elgie: Most of them never reach that stage.

Mr. Thompson: No, they will not. Most of them withdraw rather than have that.

3:30 p.m.

Mr. J. A. Taylor: The reason I interrupted when I did is that it struck me when Mr. Cooper was speaking and discussing considerations before incorporation that he used the phrase "public convenience and necessity," which is synonymous with the phrase used in an application for a public commercial vehicle licence. There are certain criteria laid down and there are certain facts you have to establish in satisfying a tribunal that you have satisfied the test of public convenience and necessity.

What struck me was whether or not a similar test was applied in regard to the incorporation of a trust company that would establish the public need and convenience. That was the substance of my question, and part of it was covered in connection with Mr. Boudria's question in that he dealt with the aspect of need. He did not mention convenience, but he mentioned need, and then we got into numbers instead of criteria.

I was wondering if there are tests or criteria that are applied and what evidence is necessary in order to satisfy the test of public need and convenience.

Mr. Thompson: What we essentially do is direct the applicant to that provision. You have to deal with it on an individual case basis.

Take, for example, a smaller community in Ontario that wants its own local institution. It may not be serviced. There are any number of these that do not feel they are adequately serviced by either the banking or existing trust company situation.

Mr. Breithaupt: Applications for licences under the Ontario Highway Transport Board are routinely opposed by those who have them. I presume that opposition is not actively brought forward by established trust companies opposing an application by one of the new boys on the block?

Mr. Thompson: No, I cannot recall trust companies intervening simply on the basis of saying, "Do not grant another charter because we don't want the competition," in effect, although they would not give that as the reason.

Mr. J. A. Taylor: What you have indicated is that there might be an ability to establish need and/or convenience on the part of the public under different circumstances. For example, Northland Trust. They want a trust company that would have more sensitivity to the type of business activities, and I guess mentality in a way, in regard to northern parts of Ontario. Or it might be in a rural area where it is more difficult to be serviced by the conventional companies that are more accustomed to dealing in large cities where their securities may be different and their markets may be different. I understand that. That was an argument

made in the western bank application, that they wanted to service the west.

That is evidence to demonstrate public convenience and/or need. I was wondering if there is a set of criteria used in establishing public need and convenience.

Mr. Thompson: No. As I say, one of the first meetings with the proposed group of incorporators would be to direct them to the necessity of complying with that test. We do not provide them with that. That is a test. They have to establish and meet that onus. We say that is the test you have to meet.

Mr. Breithaupt: But surely the putting together by that group of a variety of local themes brings a fairly routine response from the administration as far as incorporation is concerned, does it not? Do you really look into public convenience or necessity in any depth?

For example, in our area, before Canada Trust took over the company, Waterloo Trust had been a company within Waterloo county, as it then was, servicing a variety of locations in the county through perhaps 15 branches. There were not many other trust companies with branches in the area until recent years, when perhaps now each of the major ones has a branch, or several, within our Waterloo region, just as they have elsewhere. At the time a new incorporation occurred, there would not be much, surely, that would hang upon the granting or otherwise of incorporation based on that test alone.

Mr. Thompson: We have really talked about a relatively simple example and it is a very complex problem. The section really says it is up to the applicants to satisfy that they will advance the public convenience this way.

Mr. Breithaupt: Have you ever challenged what was in an application?

Mr. Thompson: Yes, we have.

Mr. T. P. Reid: On what grounds? Is there more than one--

Mr. Thompson: We simply do not think there is need. If somebody wants to start a full-service trust company in Metropolitan Toronto, you are raising questions about capability, competence and all sorts of things. Really getting down to it, does Toronto need another trust company?

The Vice-Chairman: Mr. Boudria, did you have some further questions? Then Mr. Renwick.

Mr. Boudria: --demonstrating to you that there is a need in Hawkesbury for a trust company;--by the way, I do not believe there are any trust company offices in Prescott-Russell either. When that is started, what stops them from opening up a branch the day after in Toronto or Ottawa, where there is not really a need for additional ones, according to what you have just told us?

Mr. Thompson: There are undertakings that must be given at the time by the promoters with respect to keeping their operation there.

The problem we had was that it is fine when you have a small company somewhere and it has been doing well in a particular community, but then somebody else buys it.

Mr. Boudria: That is what I am getting at, Port Colborne.

Mr. Thompson: We had no controls, but now we do. On the transfer of ownership or shares of that, we are saying simply that before we approve the transfer of ownership of that company, we want them to take into account all these other tests as to the continuation and operation of this.

Mr. Boudria: Notwithstanding the same ownership, there is nothing that prevents new management brought into a company from saying, "Hawkesbury is a really beautiful place, but there are bucks to be made here; why can we not open a branch in Toronto?"

Interjection.

Mr. Thompson: There is not any legislative, but I think--

Mr. Boudria: Getting at this public convenience and necessity--

Mr. Thompson: I think Mr. Cooper will be getting into something like what we are saying, which is that basically we want a three- to five-year projection, not just financial but where this company is going.

Hon. Mr. Elgie: In terms of that community.

Mr. Thompson: Yes.

Mr. Boudria: Very quickly, going back to the question I asked originally, Mr. Thompson. In response to Mr. Renwick's supplementary, we were talking about the number of times applications went through to cabinet. Has there been any time when you have sent a favourable recommendation to cabinet and cabinet turned it down? The reverse of what was asked before, in other words.

Mr. Thompson: There have not been that many in the last few years. No, I cannot recall any.

Mr. Boudria: Thank you.

Hon. Mr. Elgie: It is the supplementary that I do not know the answer to. What if a federally or provincially incorporated company applies to be licensed to open up a business in Ontario, does the same public necessity and convenience test apply for the licence to operate an existing company at the present time?

Mr. Thompson: That is a difficult one. It ought to, it opens the door to it, but we have the constitutional issue there. Can you absolutely bar a company from doing business?

Mr. Breithaupt: Do you mean you could bar a company or you do not have the power?

Mr. Thompson: Whether we could.

Mr. Breithaupt: Whether you could.

Mr. Thompson: You could try, but it is very difficult. whether you can deny existence to a company that is incorporated federally with a head office in Ontario, can you deny them the right? That is one of the areas.

Mr. Breithaupt: Could you deny a federally or provincially incorporated company with head office in Winnipeg from opening a branch in Kenora, which might well be a convenient and practical relationship?

3:40 p.m.

Mr. Thompson: Yes.

Mr. Breithaupt: You can stop that, but with a federally incorporated company with head office in Ontario, you would be somewhat hard pressed to deny it the right to open a branch in Fort William, if it chose to.

Mr. Thompson: You are denying them their right to exist. I suppose that is the real question: are you denying them the right to even exist, and do you have the constitutional right to do that?

Hon. Mr. Elgie: The select committee looked at this issue--and it is a difficult issue, let us acknowledge that--and felt that the public necessity and convenience test should be taken away and it should be as of right. I do not happen to agree with that.

Mr. Crosbie: That is on pages 16 and 17 of the select committee report.

Mr. Renwick: I am not certain how we are going to deal with the select committee's report in the light of the new evidence which is coming in front of us. I am in the hands of the committee as to whether this is the appropriate time to deal with it, but we dealt at some length with the question of public convenience and advantage and public necessity and we recommended that it be deleted from the act.

We recommended that in its place there be put some more definitive requirements for incorporation, and we listed the four of them. At that time, we reported to the assembly that the committee was advised by the registrar that notwithstanding the branch networks of loan and trust companies throughout Ontario today, it is still a fairly simple matter for an applicant to

establish public necessity for a trust or loan company or for an additional trust or loan company in the intended locality of the head office of the proposed company. No application, certainly within the past 10 years, had been refused on this ground.

We also recommended that so far as extraprovincial corporations were concerned the requirement of public necessity and convenience be eliminated as well.

I do not quite know how we are supposed to meld these various comments with what is being proposed here without rehashing a lot of what is in the select committee report. It seems to be a most inefficient way to proceed in the matter.

If the ministry is going to put before us specific outlines of these various matters, it must advise us about whether it does or does not accept the provisions of the select committee's report. I do not care whether you do or do not, but to my way of thinking we are having a kind of irrelevant discussion when there has been a committee of the assembly already recommending one question. We are discussing public necessity and convenience; the committee has already reported that certainly in 1975 it was no obstacle of any kind to incorporation.

Frankly, I do not know where we are going. I think this raises the issue and at some point this committee has to decide what in God's name it is doing in the committee. I do not have any understanding of it.

Are we doing a general review of the law of loan and trust corporations? Are we doing a review of those evils in the Loan and Trust Corporations Act which became in obvious need of remedy because of the events which transpired, or are we engaged in just a general discussion about loan and trust corporations?

We have to clarify specifically our terms of reference. Only the committee can do that. Then we have to let the ministry know how we expect it to respond to it. Otherwise, we are going to wallow for four weeks in this world of complexity and technical jargon of one kind or another. We will fall into the same trap that we fell into in 1975. We will not have any effective understanding of what our purpose is here.

Are we to review suggestions from the ministry which will correct what the ministry perceives to be wrong with the Loan and Trust Corporations Act in respect of the events of 1982 and 1983, or is this just another general review of the Loan and Trust Corporations Act?

The Vice-Chairman: If I may reply to Mr. Renwick, my understanding of the task given to this committee was it was to review the white paper. We will obviously be hearing a great many people; you have been provided with a schedule of people who wish to be heard as to any changes that might be proposed to the Loan and Trust Corporations Act.

I do not have the chairman here to ask him what was in his mind, but my understanding is we are to review the white paper. It

is my understanding we will have every opportunity for a full and thorough discussion of all the changes provided, which would lead me to believe that you might, at that time, deal with the issues--for example, the one you have just dealt with, public need and convenience and that sort of thing.

As I say, I cannot read what the chairman's intentions were, but that is my understanding of it.

Hon. Mr. Elgie: The portion of the meetings we are involved in now were in response to the committee's request last fall to give this kind of an overview. It is not in any way to suggest a rehash of the 1975 report.

Mr. Renwick: You have a fantastic knack for not answering what I said.

Hon. Mr. Elgie: You do not let me finish, that is why.

Mr. Renwick: You are not answering what I said. This morning you relegated this report to the time when you introduced into the assembly the bill with respect to the amendment of the Loan and Trust Corporations Act. It was in your opening statement, if I understood it.

Hon. Mr. Elgie: I was about to say that.

Mr. Renwick: Then we come to a question of the discussion of public necessity and convenience. There is no reference in the ministry's submission to the fact the select committee had recommended that provision be eliminated and another criterion be substituted for it, so we begin to rehash all the work which was done by a previous select committee without any direct response by the ministry to that kind of question.

If that is the way you want to do it, I will put this aside for another two years until after the next election and the new parliament. When the bill comes through we can then deal with it. If, however, you want to have a progressive, intelligent discussion of loan and trust corporation work, we are going to have to take into account what the select committee recommended; not to adopt it, but at least to be aware of what the recommendations were so we will not waste the time and money of the assembly rehashing matters which are within your knowledge.

I do not understand what you want us to do. Are you saying to us you do not want to discuss any of the matters which related to the problems in the Loan and Trust Corporations Act with respect to the Cadillac Fairview transaction, or do you want to come up front and say: "These are the problems that transaction faced this ministry with. We want to move to correct the legislative vacuum to the extent there was one." I think we have to get up front with the game we are playing.

Hon. Mr. Elgie: With the greatest of respect, I was not going to get into an argument with you. I was just going to say that this stage of the process was one the committee requested--and this committee, of course, orders its own affairs.

As I indicated in my opening statement in regard to the proposals we had put forward for revision of the Loan and Trust Corporations Act, where there was a relation to the select committee report we would so indicate and comment on it. But that select committee report is one we have analysed. When legislation is introduced, those recommendations that are not included in our proposals for revision will be dealt with in that bill.

It seemed to me to be a fairly straightforward approach to it. This committee can certainly review that and consider any other approach. That was the approach we thought might be feasible and might allow us to deal with it in the time allocated. It is not to get into an argument about it at all.

3:50 p.m.

Mr. Renwick: I am only interested in an efficient process in the committee.

Hon. Mr. Elgie: We agree with that.

Mr. Renwick: I do not think today's has been an efficient process. I think it is reasonable to expect a working paper from the ministry, as a supplement to the white paper, saying whether they do or do not accept the select committee's recommendations, a number of which, because they were not implemented, led to some of the problems the ministry had.

We still get shifted back to the fact that the members of the committee wanted it done this way; I regret I was not at the meeting when that decision was made. We need some indication from the ministry about what defaults under the Loan and Trust Corporations Act led to this review.

Sir, you seem to be not at all interested in discussing any of those questions. This committee does not have any information available from the ministry by way of background information or otherwise, except what we all had anyway.

The Vice-Chairman: With respect, Mr. Renwick, whether or not you feel this day has been productive, it was indicated quite some time ago--through Mr. Breithaupt, I believe--we should have an overview of the Loan and Trust Corporations Act. A number of members around this committee table clearly indicated they needed the overview so they could really carry on proper deliberations. They did not understand many areas.

Mr. Reid said, if I may paraphrase, he did not understand several areas. I think it has been very worth while. Some very good questions have come up that have raised requests for additional information from the ministry. In fact, the people here have indicated they are going to attempt to provide information and answers to those questions asked to date.

As well, I understand it will be a thorough review of the white paper on loan and trust corporations. I expect the discussion to be relatively free-flowing when we get to that area, which we are due to start some time within the next 24 hours. As I

do not intend to limit questions at this particular point, if you wish to refer specific questions from the select committee's report or recommendations, as a comparison against or in relationship to any areas, I certainly do not see why that could not be done.

Mr. Gillies: I do not particularly want to get into this argument, Mr. Chairman. As one member who obviously did not have the opportunity of being on the select committee on company law in the mid-1970s, I found today rather instructive. It has certainly highlighted certain areas, some of which we pursued this morning, that I think we will be looking for answers to, such as the multiplier of loan ceilings and so on. I, for one--I do not know what other members feel--have found today rather helpful.

Mr. MacQuarrie: It has kept us on the edge of our seats.

The Vice-Chairman: As I say, the committee does, in fact, direct its own procedures, and it has been referred to. My understanding is that it would, as they say, be a thorough review with wide-ranging discussions.

Mr. J. A. Taylor: Mr. Chairman, through you, could I ask the minister or his staff whether there has been an in-house review of the select committee's report in regard to the trust and loan corporations? If so, whether--

The Vice-Chairman: Whether it would be possible to have it.

Mr. J. A. Taylor: --we could have the benefit of that, and whether the ministry is embracing any of those recommendations? I must confess, I did participate in some of that early work, probably 10 years ago. Again, I must confess, it is not as fresh in my memory as it might have been, and that leaves me, of course, maybe going over same ground again that we went over then.

Interjection: That is right.

Mr. J. A. Taylor: It may be that the ministry feels some of the recommendations they made in that report--and I thought there were some good ones, naturally--should be implemented. As far as I am concerned, it might settle that area. Why get into that?

For example, you were just talking about how in practical terms you incorporate a trust company. Then we get off on this question of how you satisfy public need and convenience. Mr. Renwick is right. There was no need to get into that if the ministry had considered it and said: "Yes, this really may be redundant now. We currently face the additional problem with respect to the Charter of Rights or something, and frankly we do not consider it required." He could have said that or he could have said the opposite, "We do not accept the committee's recommendations." That is fine. As far as I am concerned, I do not want to debate it again. Is there something like that that could assist us as we go through this?

Mr. Crosbie: Mr. Chairman, may I comment on that and at the same time deal with one of the questions Mr. Renwick raised? We have looked at the select committee report and we are in the process of working on the drafting of the legislation. We are at a preliminary stage on a lot of it and we recognize that there is a lot of material in the select committee report that should be incorporated in any revision of the Loan and Trust Corporations Act that we bring forward in response to the white paper.

However, as I tried to make clear in my opening comments, when we were talking about what we were to present here today we thought that if we got into following the format of the select committee report as I went through the act, you would inevitably fall into the trap of wanting to discuss the issues raised by the select committee report, not the issues raised by the white paper, and we see it as our function to provide the committee with information to assist them in dealing with the white paper.

After Mr. Cooper's presentation on a typical incorporation, our next presentation was to take the white paper and go through it recommendation by recommendation, making comments on it and, where possible, relating it to the select committee. If the select committee had made a similar recommendation or a contrary recommendation, we would identify it for the committee's information and would indicate what the white paper is saying. We thought that by the time we had finished our presentation we would have gone a long way to satisfying your request, Mr. Renwick.

We do indicate where the white paper ties in to the select committee and what is before this committee in connection with the two papers, but we were deliberately avoiding trying to bring before the committee at this time recommendations of the select committee that are no part of the white paper. We may, in fact, be incorporating them in the legislation and, as the minister said, those issues will undoubtedly come before a committee of the Legislature when that act is brought forward, but we were not trying to deal with them at this time.

Mr. Renwick: Mr. Chairman, my undertone of professional irritability about the issue, which will probably be evident throughout the hearings of this committee, is that the select committee did not sit in a vacuum; the select committee sat as part of an overall review of the corporate law of the province, but specifically because of the collapse of British Mortgage and Trust Co. in Stratford and because of the run on the York Trust Co., which was stopped only by legislation passed in the assembly in one day. So we have been down the road before.

The committee was appointed to review the Loan and Trust Corporations Act in the light of those financial debacles in the province, which led to the strange anomaly that Victoria and Grey took over what was left of the British Mortgage and Trust Co.

Mr. J. A. Taylor: There was Atlantic Acceptance, too.

4 p.m.

Mr. Renwick: Yes, but that did not come as a loan

corporation one; we dealt with it in another aspect. I was speaking specifically about the trust company operations. The York Trust situation and the British Mortgage and Trust situation led to the committee report. The committee reported and the committee tried to improve the legislation to deal with a number of those issues that one way or another led to those debacles. We made the report and nothing has been done about the report.

I am not saying any more than any other member would say that it was etched in stone or that it was part of the 10 commandments. What I am saying is there were things wrong with the Loan and Trust Corporations Act which the committee at the expense of the public purse spent a lot of time trying to deal with, and came up with recommendations it considered to be carefully thought out at the time. We find that nothing was done about those recommendations. We wait until there is another debacle in the loan and trust corporations business and then come up with a white paper from the ministry and we are asked to discuss the matter. Perhaps you can appreciate the irritability.

I recognize Mr. Gillies was not on the committee. I also recognize that 10 years down the road Mr. Gillies will probably be on the committee next time when I will not be on the committee. That is the way the world goes. I just wanted to express the intensity of the professional concern I have about what we are doing.

There were things we thought were important in 1975 to correct errors in the law related to the Loan and Trust Corporations Act. Obviously, for close to 10 years the ministry did not think they were worth the paper they were written on.

A number of other reports were implemented one way or another, but this one, for reasons unknown to me, was never implemented. I am not saying it would have protected the public against what happened in this situation, but I am saying it might well have gone some way towards doing that. Therefore, I am concerned when the ministry--I am not criticizing Mr. Cooper or anybody--starts to outline to us the provision for incorporation and we come to the question of public necessity and convenience. The committee made specific recommendations about both the deletion of it and what should have been included in it with respect to how companies should be incorporated.

We find some of the companies which caused the province problems have been recent incorporations and no change had been made in the incorporation procedure. If the incorporation procedure had been changed, it may possibly have been that some of the problems would not have happened.

I then expect the ministry, when it is making statements to us, to include in its remarks the comment that the select committee on that particular issue made recommendation thus and so and the ministry will comment on it later on, or the ministry will comment on it now, or the ministry accepts it or the ministry rejects it. I do not care what it is, but I think we are going to be in a kind a swamp if we do not do that.

I do not want to spend my time trying to one-up the committee, along with Mr. Taylor, because we sat on the committee, pointing out page references to this. That is not the name of what I want to do in this. I want to understand what the government's position is on these matters when we are considering the white paper. I want to make certain the ministry addresses those remarks, because we do not have the facilities to make all the comments, and obviously you have studied it.

If you have not studied the 1975 report, fine, I do not care. If you have studied it, you must have decisions by this time as to what was to be done about it. If you were doing the white paper for us, I would have assumed it would have been part of a continuum from this report, that somehow or other you would have said, "In this report there are these various things we want to change," or, "We do not accept them," or, "We reject them," whatever you want. Whether you did it by way of addendum or not, I do not know.

I wanted to express my underlying irritability during the course of the next four weeks right at the beginning.

The Vice-Chairman: If I may perhaps help alleviate your concern in some way, it has been clearly stated, and I think it will happen, in fact, that the sections in the white paper that have the relationship to the select committee will be referred to. That has been clearly stated.

Second, as your acting chairman of the committee, I will discuss those issues that are not covered in the white paper and attempt to find out if at least the minister might be able to put us in a position of understanding where those other recommendations stand. Would that be acceptable?

Mr. Renwick: Of course.

Mr. Breithaupt: Mr. Chairman, our research people will include those recommendations in the summary, which will give us that advantage.

The Vice-Chairman: Mr. Cooper, would you please continue?

Mr. Cooper: The next item is the method of remuneration that must be considered. By way of explanation, financial intermediation is the bringing together of lenders and borrowers to produce a profit centre, which is the interest spread or yield on investments, less the cost of borrowed funds.

Executorships, trusteeships and agencies, as a profit centre, produce fees for services rendered for a longer term stable income.

The next question is whether to incorporate federally or provincially. A decision must be made as to where incorporation should take place and they must consider some of the advantages and disadvantages. The statutes are basically identical as far as investing and borrowing conditions are concerned.

If federally incorporated, the operator must obtain registry in Ontario to be able to open an office or a branch in the province. If federally incorporated, deposit insurance is automatic, whereas if Ontario incorporated, the parties must apply for deposit insurance and face the risk of possibility of a turnaround.

Minimum capital, in practical terms, either way is \$1 million, but each jurisdiction demands more. In this respect, the Loan Companies Act of Canada states the minimum capital is \$500,000. However, any such formations would not be registered in Ontario.

The basic powers are the same. Nevertheless, it would appear that federally incorporated companies can be licensed in other provinces more readily.

Of interest to promoters during their early considerations is the answer to the question: how much time elapses between preliminary discussions and delivery of the certificate of initial registry? Efforts to reduce the time frame are dependant upon the degree of co-ordination between the promoters and their advisers and the completeness and suitability of material provided at the different stages.

Subscription to shares: If initial promoters intend to draw in other investors not directly related as subscribers, there is a need to issue a prospectus through the Ontario Securities Commission to attract shareholders. The registrar's office stands aside and will direct the promoters to the OSC for consultation.

Is a loan or a trust corporation required? It is possible for the affairs to be arranged so the intended activities fall within the exemption in the act. Where investing is primarily through mortgages, the source of funds is confined to shareholder resources or borrowing from the public in amounts individually exceeding \$100,000.

Any contact with the registrar's office in these situations results in a suggestion to consult with the Ontario Securities Commission. In this kind of a scenario, there is no requirement for licensing or registration under the act.

The mortgage investment corporation has already been discussed earlier today. A loan company may be designated as a mortgage investment corporation, which is a term founded in the Income Tax Act.

The prime attribute is a flow-through taxation concept in which, if earnings are fully divided out, the corporate body is tax free. The disadvantages are a lower authorized multiple, up to five times, and no shareholder may own more than 20 per cent of the shares. The implication is the MIC designation is unattractive unless ultimate shareholders are nontaxpayers, such as pension funds.

4:10 p.m.

In summary, the five promoters reached the conclusion that the formation of a trust company is more demanding in terms of talent and expertise required, as well as capital contribution, than the formation of a loan corporation. The decision to advance their proposal was taken individually and collectively, and their final action should be based on their initial considerations previously set out.

Mr. T. P. Reid: Maybe I just missed it, but if we look at the trust companies and the loan corporations registered in Ontario and the federal incorporations under the Loan Companies Act in particular, there are a lot more registered federally than there are provincially.

What is the advantage of being federally incorporated rather than provincially incorporated, other than the fact that, presumably, they can operate in all provinces after they go through the provincial requirements?

Mr. Cooper: I think really it is the ease of moving into the other jurisdictions.

Mr. T. P. Reid: That is it primarily. There are no other advantages or disadvantages? What about time? You mentioned time.

Mr. Cooper: No, I do not think so. It was just pointed out to me that there is the automatic Canada Deposit Insurance Corp. coverage. As a practical matter, that really is not a problem either. There might be a small time frame that you have to consider, but that is not what I would base my decision on.

Mr. T. P. Reid: The overriding decision is the ease of expanding or operating in other provinces?

Mr. Cooper: I think that is the main one.

Mr. T. P. Reid: Just to follow that up, could I start up the Breithaupt Trust Co. in Ontario, registered in Ontario, and start a similar company in Manitoba called the Breithaupt Trust Co., presumably without any relationship one to the other? Would I run into any regulatory problems with that?

Mr. Cooper: You would do this through a holding company?

Mr. T. P. Reid: Presumably; or two separate companies.

Mr. Cooper: If you are doing it through a holding company, assuming that the regulators in Manitoba or the other province are prepared to accept you, I do not think there is any obstacle in our statute. You would have difficulty if you were going to attempt to incorporate, say, a trust company and then have it hold another trust company. You would not be able to do that.

If you had a holding company, I think that would be up to the other jurisdiction. I do not know how probable it is, but theoretically there is nothing to prevent it.

The next item on the list is the pre-incorporation meetings with the registrar. Inquiries regarding incorporation are received frequently by the registrar. The interested persons may be unfamiliar with the industry, or could be active in an existing corporation.

The following discussion presumes an inquiry from a relatively unsophisticated source that eventually results in an incorporation.

Upon receiving an inquiry by telephone or letter, a meeting is arranged with as many of the potential investors as are prepared to attend. At this meeting, the investors are requested to briefly explain their backgrounds and what they hope to accomplish with a loan or trust corporation. The registrar will stress to the investors that incorporation is not a matter of right but is a privilege granted for the furtherance of the public interest.

Corporations to be created with self-serving aims are strongly discouraged. It will be pointed out that the word "trust," with all of its implications of honesty and integrity, has to be taken seriously.

The extent of the intended capitalization is requested. The object of these questions is not to discourage serious investors, but to save the time and money of those who do not have the necessary financial resources or whose objectives do not require the use of a trust or a loan corporation.

At the initial meeting, the investors are encouraged to retain the services of both a lawyer and an accountant to assist in the incorporation and planning of the operation. Depending on the nature of their proposed operation, they could be advised to have a survey conducted in the proposed area of operation to assess the need for a corporation in that locality and the viability of their plan.

The general requirements of the legislation are mentioned, such as the need to demonstrate public necessity and to give satisfactory evidence as to the fitness of the applicants. The investors will also be cautioned that the Ontario Securities Commission has rules respecting the raising of capital, and they will be advised to consult a lawyer or the OSC before proceeding beyond their initial group.

The registrar's office, in essence, provides an advisory service to potential incorporators. While this is a time-consuming process, in the long run it avoids frivolous applications that would be time-consuming and costly to both the individuals and the registrar. It also goes a long way towards assuring that people getting into the industry through the incorporation route know what will be expected of them.

It is usual for a number of meetings to be held with the investors prior to incorporation. Many of these meetings will revolve around the brief containing their plan of operation that they are requested to submit. These plans are developed by the

investors, reviewed and commented on by the registrar and in fact are very often revised many times.

Are there any questions on that part?

Mr. Boudria: Getting back to the question I was asking earlier, you were talking about the locality and whether the need was there. Again it goes back to the same thing. There is nothing to stop someone from opening a trust company in a small town and having a branch in a larger city nearby.

Mr. Cooper: No. The brief we ask them to submit usually covers a five-year period though. Their intention with respect to branch operations will be set out there, so that, at least during the initial life of the vehicle, we have some idea of what their plans are.

If they are going to incorporate in a smaller community and then move into a major metropolitan area in the province that should be set out in the brief. We would do our best to try and discourage them about this.

Mr. Boudria: Is this five-year plan requirement new, or has it always been a requirement?

Mr. Cooper: My understanding is that the registrar has asked for this for quite some number of years. When somebody comes in, it is a part of the feasibility and viability study, saying what they want to do.

Mr. T. P. Reid: May I follow up on that? Say somebody wants to start a fourth branch in Atikokan. He has given you the five-year plan but two years later he says, "I am going to open a branch in Thunder Bay."

Do you have any authority to say he cannot, other than saying, "You did not tell us you were going to do that."?

He says, "We have changed our minds." Do you have the authority to say, "No, you cannot"? I think that is what Mr. Boudria is getting at.

Mr. Cooper: I understand what you are saying. No, I do not think we have that kind of authority directly. Stop me if you disagree, Mr. Thompson.

Mr. Thompson: I think we do now; we did not at one time. We relied on the fact that it was a measurement of the progress of the company until it got to the stage where it was sort of on its own. As Mr. Cooper will get into, the examination and process will be lessened as it builds up its own expertise and its own capability. It is almost a weaning process in a way but, still, it was a yardage--

Mr. T. P. Reid: If they survive they can and if they go broke they cannot.

Mr. Thompson: I think today we do have the power to

impose terms and conditions on them that we did not have before.

In an extreme case, if somebody decides that our small local trust company is going to open in 12 communities overnight, when it is known that every time a new branch is opened it costs well in excess of \$100,000, and the capital is virtually gone in expansion; I would suggest we would stop that.

Mr. T. P. Reid: Let me go back then. If a company is federally incorporated, do the same rules apply? Supposing it starts out in Quebec and then comes to Ontario, relatively under the same circumstances, can you stop it if it has the capital to open a branch in Ontario--or three or four branches?

4:20 p.m.

Mr. Thompson: No, not very effectively. Not yet.

Mr. Boudria: I guess we are coming back to the same--

Mr. Thompson: This is part of our paper.

Mr. Boudria: What is the point of that whole exercise if somebody can go through the back door and do the same thing?

The Vice-Chairman: That is part of the proposal.

Mr. Boudria: In so far as the extraprovincial ones are concerned, we talked earlier about that. I believe it was Mr. Crosbie who said our constitutional authority in that regard would be a test.

Mr. Crosbie: I think what I said, Mr. Boudria, was that if we have a law of general application I think we have a fair chance of upholding it. The present act does require an extraprovincial company coming into Ontario to establish the need and public convenience, the same as an Ontario company. To get started, they are under the same type of criterion.

Mr. J. A. Taylor: On a point of order, Mr. Chairman: If I am not mistaken, Mr. Cooper is dealing with pre-incorporation matters so we have not reached the point where the trust company is incorporated and is applying for provincial licences and so on. I think that is what he is talking about here. Correct me if I am wrong.

The Vice-Chairman: The pre-incorporation meetings; that is correct.

Mr. J. A. Taylor: The pre-incorporation meetings and, presumably, the power of persuasion in terms of what a five-year plan may look like to determine whether letters of patent will be eventually granted. I think that power of persuasion would be pretty strong if the final decision as to letters patent rests with your recommendation.

Mr. Boudria: I recognize that. The reason it is brought

up is to question what all these pre-requirements effectively do, if they can be changed almost immediately after.

The Vice- Chairman: If I may interject, Mr. Boudria, we really were not dealing with pre-requirements at this time, other than these pre-meetings. The requirements are being explained to them.

Mr. Cooper has quite a lengthy statement; it gives you almost step by step everything that happens. I suggest to you that perhaps because he is at the end of this particular pre-meeting section, this might be an appropriate time to adjourn.

I would like to comment on Mr. Renwick's previous question to the extent I am able. I am led to believe there might be a chart that we might be able to provide which would give you the answers to the questions you have been asking previously.

Mr. T. P. Reid: There are a lot of mights in there.

The Vice-Chairman: I have only had limited discussion on the matter, but let me assure you again that points raised which have relationship to the white paper as well will be clearly noted.

Mr. Cooper, I know you have a number of other headings but I think this is an appropriate time for the committee to adjourn and to reconvene again tomorrow at 10 a.m.

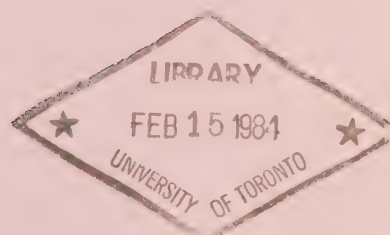
The committee adjourned at 4:23 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

WEDNESDAY, FEBRUARY 8, 1984



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk pro tem: Richardson, A.

Staff:

Nigro, A., Researcher, Legislative Library
Mooney, P., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Cooper, R. G., Deputy Superintendent, Legal and Investigation
Branch of Insurance, and Assistant Registrar of Loan and
Trust Corporations

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 8, 1984

The committee met at 10:08 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Renwick: Mr. Chairman, I believe there are in existence principles of accounting for loan and trust corporations of the Institute of Chartered Accountants. Would it be possible to get a copy of the principles that have been put together as a result of the study that the Institute of Chartered Accountants has made over the years of the accounting of loan and trust corporations?

The Vice-Chairman: I will direct the question to the ministry.

Mr. Thompson: I had a quick look at the brief they have before the committee. I think there is reference to it there. We will certainly pass that along and make sure of that, Mr. Renwick.

Mr. Renwick: I believe they have a document setting out their views about accounting for loan and trust corporations. I think it would be helpful to the committee to have that.

The Vice-Chairman: I might mention just before we begin that I was just talking to the deputy here. There has not been much time for them to obtain the information that has been requested by the committee but, with the committee not sitting this afternoon, they hope to be able to provide some of the material that was asked for at least by tomorrow.

Mr. Renwick: That is fine. As long as we get it.

Just one other thing: since the trust concept will play such an urgent and important part in our consideration of the trust company aspect of this work, would the ministry consider producing from among the outside counsel it has retained on the various problems relating to Crown and Greymac, a representative from one of the law firms advising the ministry on these matters, a person who is totally knowledgeable about the trust concept, not in the purity of its origin but in the way in which it is understood by those who are advising trust companies with respect to the trust obligation related to deposits and guaranteed investment certificates?

Hon. Mr. Elgie: We will certainly have those discussions and get back to you on whether that can be achieved or not.

The Vice-Chairman: The committee will resume hearing from Mr. Cooper.

Mr. Cooper: Mr. Chairman, yesterday I ran through the considerations to which the incorporators must put their minds and we went through the preincorporation meetings with the registrar.

The first item today is, what are the requirements of the registrar. He looks for a clearance of the proposed name of the corporation, a clearance for the publication of the notice of intent to incorporate, he looks for a submission of the proposed bylaws for review, the arrangements to put the capital subscriptions into an irrevocable escrow arrangement, information on the personal financial resources of the promoters, and, as we discussed yesterday, a submission of a brief with some of the following headings: the promoters' profile, directors' profile, officers' profile, location and local competition faced, style of operation, functions, delegated authorities, investment philosophy and policies, financial forecasts, etc.

With respect to the selection of a name, it necessitates liaison with the ministry's companies division and it must not be identical with that of another registered or extinct loan or trust corporation, or a name likely to deceive, mislead or confuse the public. Preference is not to choose a name that matches or resembles a mortgage broker or entity in an allied field. It must not imply sponsorship or endorsement by government at any level. Not surprisingly, the clearance of a suitable name is a very time-consuming job for the promoters.

Notice of intent to incorporate appears in the Ontario Gazette and local newspapers for one month prior to filing an application for incorporation. It may be published under the name of the applicants, e.g. the holding company, etc., but usually is under the name of the solicitors for the applicant. The statute does not require the naming of the actual promoters in the notice.

Proposed bylaws are also reviewed. A set of model bylaws can be provided to facilitate drafting. The registrar may request amendments if the bylaws are repugnant to the statute. Some of the main areas reviewed are the terms and conditions of preference shares, including a requirement that the bylaws should provide for notice to the registrar prior to redemption of preference shares or purchase of cancellation for common shares. It also deals with the borrowing powers, the execution of documents and the custody or control of funds of the corporation.

The capital subscriptions are irrevocably placed in an escrow arrangement with terms that are to the registrar's satisfaction. Although capital requirements are now greater than the minimum \$1 million prescribed by statute, it is acceptable to allow incorporation with evidence that the \$1 million is in escrow, on the understanding that the higher paid-in capital is in place prior to registration. This allows the promoters to use the money in excess of \$1 million between incorporation and registration, a hiatus sometimes of some two to three months.

Customarily, proposed arrangements for deposit and escrow of capital funds are with a chartered bank and include: acceptance in principle by the bank to open an account in trust for the proposed corporation; appointment of a trustee, which could be individual

or corporate; agreement among the promoters for the return of funds if incorporation does not materialize; and funds must be free from any liability whatsoever.

We also look to the personal financial resources and they must be disclosed by the key promoters. The practice is to persuade submission of personal net worth statements, with accountants' comments attached. Where it is intended that an existing holding company plans to subscribe to the majority of the issued capital, audited financial statements of the holding company going back three years are required.

Promoters are called upon to submit a brief. We have insisted the provision of a model brief is counter-productive. Submission of draft briefs is recommended. Promoters are cautioned to retain a final brief for direct forwarding to the Canada Deposit Insurance Corp. We urge that promoters adopt the fullest possible disclosure theme in their first draft as it is easier to condense than to expand.

Topic headings expected are: at least the names of the promoters, with address, date of birth, education, prior business experience, contributions in terms of expertise, etc., the names of the directors and the names of the officers. Often the chief executive officer, the chief financial officer and the mortgage manager are found within the promoter-director group or they may come from the professional and business community. In the latter instance, names are usually not available. However, we insist on a profile of the suitable person, his credentials and the salary range offered.

We also look for the location proposed. This subject matter covers the proposed first office site, planned branches, the extent of competition to be faced, consumer needs in that area, and the perceived shortcomings of competitors.

The style of operations: the brief describes what services will be provided to depositors and the extent and timing of involvement in full-service trust company features. Delegated authorities fall within this topic, with the promoter addressing executives and audit committee levels and responsibilities. We will want to know the auditors and solicitors for the corporation.

The investment philosophy: the promoter outlines the type of investments envisaged, with emphasis on mortgage funding. We expect considerable detail as to appraisal techniques, underwriting, approval authorities and procedures. To assist in this aspect, we distribute the CDIC draft mortgage guidelines.

Financial forecasts: a five-year forecast is required for both the balance sheet and the earnings statement. All assumptions must be attached. Often urged is that promoters develop a crude forecast, to be subsequently improved as to style by professional auditors.

That is everything under that heading.

Mr. Boudria: I have just a few questions, Mr. Chairman.

Mr. Cooper, you were talking about the names of the companies and how you took a considerable amount of care to make sure that the names of two different companies were not confusing. When I look at Ontario companies, there are not too many confusing names. However, when I look at the federal companies registered in Ontario, I have a hard time figuring out which is which. The names resemble each other so much; Canada Trust, Canada Permanent Trust, North Canadian Trust and so on. You find the names just repeat themselves all over the place.

Does that mean you are not getting very much co-operation from the other level of government in what you are attempting to do? What does it mean?

Mr. Cooper: It indicates that companies generally like to have names that are as close to a style as possible. Hence the use of the word "Canadian" over and over again. This is a common problem when you are trying to find a name. You have to look for something distinctive and I think the word "Permanent" or "North Canadian," even though in conjunction with "Canadian," is some measure of distinction between the corporations.

Mr. Boudria: How about this example here: the Morguard Home Mortgage Investment Corp. and the Morguard Mortgage Investment Co. of Canada? God, if that is not confusing, what is?

Mr. Cooper: One of the things you have to keep in mind with corporate names is that if it has an affiliated company you are dealing with the same family. Usually the use of similar terminology will be followed by a consent from the holding company or from the sub, whichever way it is going. You are dealing with a different legal entity but they are all part of the same family. That is a fairly common occurrence.

10:20 a.m.

Mr. Boudria: In a case where it is a parent company. I am sure, though, if you are dealing with Canada Trust and Canada Permanent Trust and North Canadian Trust--

Mr. Cooper: You are dealing with a different situation.

Mr. Boudria: Those are separate, yes.

You were talking about appraisal techniques in the closing of your remarks. Having read exhibit 17--that book by Mr. Belford--when we were reading about some of the appraisal techniques, I am thinking of the alleged appraisal techniques of the London Armouries transaction, for instance. It was appraised as though the place had been a shopping centre, but it was not. The author describes that as being rather unusual or uses some other word like that. I am linking to what Mr. Renwick was asking yesterday about the same issue.

What kind of follow-up is done on a regular basis to ensure that the method of evaluating or appraising real estate is good and thorough? You may not want to comment on that particular case, I am not sure whether you do or not.

Mr. Cooper: As you are aware, there is a procedure for asking for appraisals. We would receive the material and attempt to review it. If we have questions as to the value--the question of whether you are looking at market value or how they had looked at the future income, etc.--you would then go back to the company on the basis of deficiency, or with a list of questions that they would try to answer. That is the procedure that we would use on a staff basis.

Mr. Boudria: Was that ever done in the particular case I have referred to?

Mr. Cooper: I do not know.

Mr. MacQuarrie: On a point of order, Mr. Chairman: Are we not still dealing with the steps leading up to an incorporation? The value of shareholders' equity and the value of assessments are two different sorts of things. I think we are getting off the track here.

The Vice-Chairman: That is true. I am, however, trying to allow some level of flexibility.

Mr. MacQuarrie: If we have too much flexibility, we end up going in circles.

The Vice-Chairman: Are there any other questions at this time for Mr. Cooper?

Mr. Cassidy: I have a couple of questions. I apologize for being absent yesterday, but I had previously arranged a conference for that day prior to the fixing of the time for this committee to meet.

I would like to ask about the limitation on the disclosure requirements of the companies. I am not sure if this is the appropriate section to refer it to; it may have been passed yesterday. Effectively, the requirements on banks were a great deal more stringent than the requirements on trust companies, because trust companies in the Ontario jurisdiction were predominantly closely held and, therefore, not under surveillance by the OSC.

Given that trust companies were closely held, why is it that over such a long time there has been no tightening up, shall we say, of disclosure requirements or opening up of disclosure requirements for trust companies in line with what was being required on corporations, such as banks, which were under the OSC's surveillance?

Mr. J. A. Taylor: Mr. Chairman, could I raise a point of order as well? Yesterday afternoon, I think there was some concern expressed that we were maybe undertaking an academic exercise. First, we reviewed the act in a technical sense--an overview, I suppose, of the legislation. I understand that Mr. Cooper is here to give us a pedestrian overview of how you get a loan or trust company incorporated so that you will have some understanding of

how these things come into being. We were getting bogged down maybe on side issues at that point.

I was wondering if we could keep on track so that we could get this pedestrian overview as to how you get the company operating. Now that we have a company, then I guess we will get into what it is doing, what it is doing, what it should be doing, how it is doing it wrong or whatever.

I am wondering if we could keep on track. I am anxious to get this overview so that maybe we could get on to some meatier things. I think Mr. Cassidy wants to get on to some of those things as well.

The Vice-Chairman: I am sure he does.

Mr. Cassidy: As long as I can ask my question at some point. If it is not appropriate now, I can ask it later.

The Vice-Chairman: I think perhaps a good point has been raised by the committee, Mr. Cassidy. There was some expression yesterday that really what we were going through was to bring into focus the way the system works at this point. However, I assure you that if there does not seem to be a proper place for your question, I will try and make sure that time is made available.

Mr. Crosbie: Mr. Chairman, I think I can help Mr. Cassidy in that our next presentation deals with the white paper, in order, and there is a whole part of the white paper dealing with that issue which we will be discussing here before the committee.

Mr. Cassidy: I do have a question. If we are getting an historical overview, then it may be instructive to know whether there were reasons why companies legislation and banking legislation in general was being subject to ever-increasing standards of disclosure while that was not being done for trust companies. That is an historical question, not just simply looking forward but, in a sense, looking backwards.

Mr. Crosbie: I do not know that we have any short answers to that without some further historical review as to why there is the precise difference of the development of banks, banking legislation and trust company legislation. Obviously, we are talking about provincial legislation and federal legislation. There has been quite a difference in the pattern of growth and the types of disclosure of what is required, but I do not think we have any specific answer to that question.

Mr. Cassidy: I see. The reason I think it is germane is because the government's white paper rejects any limitation on ownership. Therefore, you do not have the Ontario Securities Commission rules for backup to ensure that disclosure to the public about trust companies will be of the same standard as it is for widely-held corporations such as banks. That is why I am raising it now. In other words, if you have not thought it through, and if you insist on allowing trust companies to remain

as very closely-held centres of financial power, then it seems to me that becomes a very important question.

Hon. Mr. Elgie: I do not disagree with that. I just wonder at what stage one should be discussing that. We had a brief that we reviewed. Yesterday we talked about going through the white paper and then at the end of it going through any other matters the committee wished to go through.

Mr. Cassidy: Okay. I am in your hands.

Hon. Mr. Elgie: I do not wish to be presumptuous, but I just think that there is a time to do it when it can have meaningful contributions from everybody.

The Vice-Chairman: I think the point has been well made. If, at least for this period of time, we can attempt to keep our questions related to the specific section we are dealing with, then I assure the honourable member that there will be adequate time to lay out his questions.

Hon. Mr. Elgie: A very valid point.

Mr. Cooper: The next heading deals with administrative reviews prior to incorporation. Preliminary briefs are reviewed and explanations and undertakings obtained where necessary. Where modifications are considered advisable, the matters are discussed with the promoters and agreement obtained. Often extensive additional financial information may be required concerning the promoters or the proposed plan of operation of the corporation. While every application for incorporation will in some respects be unique, the matters common to most will be discussed.

Promoters and directors: Personal and corporate information submitted by the promoters will include their dates of birth, citizenship, educational and business backgrounds and affiliations. Also, it will include net worth statements of the major shareholders.

The review will include independent checks on the individuals, and contact with regulators of other jurisdictions.

10:30 a.m.

An attempt is made to anticipate and clarify potential conflicts of interest between the proposed corporation and other activities of the promoters. Dominant individuals or groups among the sponsors are identified and voting trusts or holding company arrangements are reviewed.

Officers: The brief will contain information on the proposed senior officers. This information is reviewed in the same manner as that relating to the promoters with the emphasis, however, on the successful business experience of these people.

The act requires that there be a demonstrated public need for the loan or trust corporation. While this public need traditionally has been assessed by geographic considerations, the

increasing sophistication of the industry has required consideration of the need for incorporations providing specific services in geographic areas where corporations already exist; for example, tax planning specialists, perhaps ethnic-oriented companies.

Investment policy: In assessing the investment policies set forth in the brief, we believe that the types and proportions of investment should reflect a strategy for safeguarding the liquidity and earnings capacity of the corporation. Proper matching by the rate and maturity between the investments and borrowings should be observed. Generally, the company should not depend on fee income to make a profit. Excessive emphasis on real estate or subsidiaries in the early years is also discouraged as it tends to distract management from the essential financial intermediary function.

Area of operation: Proposals to establish a branch organization are carefully reviewed to see that they are within the financial and staffing capabilities of the company.

Product line: Where promoters intend to offer specialized product lines, care is taken to see that they will have personnel with demonstrated ability in the area. In some instances, samples of proposed documentation will be requested so that its suitability may be assessed.

Financial forecasts: The five-year financial plan included with the brief has proven most valuable as its preparation tends to crystalize the thinking of the promoters and, among other things, the disclosed profit expectations reflect the degree of risk the promoters intend to take. Generally, the reasonableness of the forecast will be a measure of the capabilities of the promoters and is measured against experience and knowledge of the industry.

Matters of particular concern are the projected growth rate and the apparent balance between conservative operations and viability. The projected growth of capital leads to consideration of the resources or fund-raising capabilities of the controlling group. The setting of realistic expectations regarding the authorized borrowing multiple, over the five-year period, acts as an additional control on over-optimism.

That is another section.

The Vice-Chairman: Are there any questions on administrative reviews prior to incorporation?

Mr. J. A. Taylor: You mentioned establishing personal and financial integrity. Does that extend further, as it does if, for example, you are applying for a liquor licence? Is there also a personal history report where there is a police check?

Mr. Cooper: I am sorry, I would be speculating. I am only in the financial institutions division. Perhaps Mr. Crosbie would like to answer.

Mr. Crosbie: Is your question, "Is it parallel to the LCBO?"

Mr. J. A. Taylor: No. I am not asking if it is parallel. I gave an example. If you were applying for a liquor licence in this province, there is a personal history record and a police check as well. In addition to establishing the financial integrity of the applicant's personal worth statements, etc., is there a police check?

Mr. Thompson: Yes there is a police check. Also, it is part of the submission to establish and set forth net worth and to give references, etc., with respect to that determination.

Mr. J. A. Taylor: Thank you.

The Vice-Chairman: Any further questions? Mr. Cassidy.

Mr. Cassidy: Has any application for incorporation of a loan or trust company been rejected in recent memory?

The Vice-Chairman: If I may interject to that particular point. Mr. Cassidy, that debate was recorded in Hansard on the same question yesterday. In fact, Mr. Thompson did reply yesterday. I believe there had been two, Mr. Thompson, but perhaps you might just want to briefly answer that.

Mr. Thompson: Formally rejected? There are many, many discussions that go on periodically. In fact, in some cases these discussions go on from year to year with the people coming back.

Mr. Cassidy: Is the public necessity test crucial for either rejecting or discouraging certain cases?

The Vice-Chairman: That again, if I may interject, was a very lengthy debate yesterday. It took considerable time. It is, I think, well recorded in Hansard. I recognize you were not here yesterday, but that has been answered. If there are any questions that flow from your reading of Hansard, I will make sure you have the opportunity to raise them.

Mr. Cassidy: Once a company has been established and it has passed for the first couple of years, can it then decide to open branches where it feels like it? Or is there some kind of regulatory--

The Vice-Chairman: I hate to do this to you, Mr. Cassidy. That very question was raised yesterday as well. I do not remember the specific comments. If memory serves me correctly, they had to identify their program for the first five years with regard to the possibility of expanding into other cities and municipalities.

Mr. Cassidy: After five years, are there any restrictions on branch establishments?

The Vice-Chairman: That I cannot answer. Perhaps Mr. Thompson can.

Mr. Thompson: That is part of what we are propounding in the white paper. I think there is today, since December 21 last, a power to contain that. But you will be hearing from industry sources that feel that is basically a management decision.

What we are trying to establish here is that opening a branch is a costly operation that could well affect the capital and, in effect, the borrowing base of this company. At best, it should be a considered decision between all parties. But you will hear from the industry that it is a management decision and for larger companies, it may well be.

The Vice-Chairman: Thank you. Any other questions at this point? Mr. Cooper.

Mr. Cooper: The next heading is steps of actual incorporation. A petition is delivered by the applicants to the registrar for the Lieutenant Governor in Council in prescribed form. The petition should be accompanied by the required fee, which is determined on the basis of the authorized capital, and appropriate documentation. This would include a declaration of the promoters' intention to incorporate, the contents of which are prescribed by statute, certified copies of bylaws approved by the promoters, evidence as to subscription and payment of capital and a certificate of a chartered bank as to the custody of capital funds.

After review for adequacy by both legal and examination staff, the petition is forwarded to the minister. When there are no deficiencies in the petition, a report of the registrar to the minister to recommend incorporation and a draft order in council to authorize the issue of letters patent to the corporation, are prepared.

Following approval by council, if that is the case, the legal staff of the financial institutions division prepares a draft of the letters patent, which is vetted by the companies division of the ministry and returned to financial institutions to be submitted to the minister for his signature.

After the minister has signed the letters patent, they are transmitted to the protocol services of the Ministry of Government Services. The protocol services affix the great seal of the province and submit the letters patent to the Lieutenant Governor for his signature. When the letters patent are signed by the Lieutenant Governor, they are returned to financial institutions division which in turn forwards them to the companies division for recording. When this step is completed, they are forwarded to the corporation's solicitors.

The Vice-Chairman: Any questions on incorporation? Thank you. Please continue.

Mr. Cooper: Next is registration. The speed with which original registration occurs depends upon the company's management, but usually is effective between six weeks and three months. The act sets an outside limit of two years, beyond which

time registration cannot be granted and letters patent are subject to forfeiture. Following incorporation, a first meeting of shareholders must be held to confirm provisional directors as directors, to elect officers, to appoint auditors, to nominate bankers, to transfer capital funds to an account in the company's name and to instruct the secretary to issue share certificates.

10:40 a.m.

Activities: until a registration is obtained, the company may exist only to hire initial staff, lease premises and design internal procedures and forms. There is no capacity to deal with the public in any way until registration is effected. There are, however, a number of matters to attend to in preparation for commencing business.

The intent to apply for registration must be published in the Ontario Gazette and local newspapers. The petition for initial registry must be filed along with the required fee. It is also necessary to provide an audited balance sheet at any date between the date on the letters patent and the date of application for registration. On receipt of the petition for registry, the documents are reviewed for adequacy. At this stage, the adequacy of any new officers is considered.

Assuming registration is approved, a certificate is produced, signed by the registrar and sealed. At the same time, the name is entered into the register and a notice that an additional company has been registered is published in the Ontario Gazette. The corporation is cautioned that it is not empowered to take, deposit or issue guaranteed investment certificates or debentures until it has deposit insurance coverage. The registrar is, however, in a position to invest the contributed capital.

Immediately after registry, a letter is written to the Canada Deposit Insurance Corp. endorsing the corporation's application for CDIC membership.

Mr. J. A. Taylor: Is it at this stage that you require further particulars in terms of the personnel, the key people who may be coming into it? At an earlier stage you mentioned that the names may be withheld, presumably because they may be working for competition. Is it at this stage that you would require to know who those persons are?

Mr. Cooper: That is right. It is.

The Vice-Chairman: Would the committee allow the chair to place one question?

Interjection: Is it relevant?

The Vice-Chairman: Yes. It is very relevant.

Mr. Cooper, you mentioned what the company can do in a specific time frame, such as appointing the officers and all of those steps. I suppose the question is not really related to this section, but assume that a company has gone through all the

necessary proposals, it has been registered, incorporated and everything is go and it is operating. What would happen if there was a change in officers? I am not talking about one or two but a rather major change in officers. What does that do to the operation of the company? Is there a point at which you would say, "There is too much of a change. We have to stop their dealing for a given period of time while they are examined"? Just what would happen there?

Mr. Cooper: That could happen if there has been a massive change and the people they have used to replace the former officers do not have the necessary qualifications.

The Vice-Chairman: Just to pursue it, what would you call a major change where you would consider that?

Mr. Cooper: If they do not have someone as chief executive officer who has some knowledge and expertise in dealing in the trust industry, both in the fiduciary and in the financial intermediary area if it is a full-service trust company, then we are going to be extremely concerned. We have to have somebody who knows how to operate the company and who has had some practical experience.

The Vice-Chairman: What steps could you take if there was that major change? Would you order them to cease carrying on business for a given period of time? What steps could you take?

Mr. Cooper: Obviously you would try to meet with them to see if you can sort out your differences. If you cannot and it is considered serious, the only procedures open to us under the act would be to convene some form of hearing.

In my opinion, the expertise of the officers is just as important a resource as the money. They have to know what they are doing. Presumably you would convene a hearing in order to look into their continued fitness to be continually registered.

Mr. Cassidy: Mr. Chairman, I am not quite clear whether basically we are describing administrative procedures rather than taking this to specific sections in the act. Is that right?

The Vice-Chairman: Yes. That was dealt with yesterday.

Mr. Cooper: The next item is what the corporation can do. Organizational: normal start-up activities include hiring staff, purchasing or leasing premises and equipment, making banking arrangements and establishing lines of credit.

In addition, the corporation will start to advertise its services and solicit funds from potential depositors and investors. An important arrangement is for cheque-clearing service, usually through a chartered bank.

Deposit taking: a loan corporation borrows money by taking deposits or issuing debentures, while a trust company accepts money in trust by taking deposits or issuing guaranteed investment certificates.

Companies are relatively free to design their own deposit accounts in the terms of their certificates. In order to preserve CDIC insurability, certificates are seldom offered for periods in excess of five years and they are normally payable in Canadian funds.

The registrar is concerned that the certificates give adequate public disclosure in the area of status with respect to CDIC insurability, early redemption conditions, procedures for payment on maturity, interest rates and method of payment.

The next item is capital. Loan and trust companies must observe requirements of the Securities Act in the issuance of capital stock. Changes in authorized capital come under the registrar's review in the processing of the required orders in council.

Companies are permitted to establish classes of preferred shares but there are certain restraints. In order to reduce the impact on shareholders' equity of the preferred share dividend payments, the total authorized preferred shares are normally allowed to be about only one third the amount of common shares.

Under the terms of the act, dividends cannot be declared if the corporation is insolvent. If preferred shares are redeemable or retractable, care is taken to ensure that these options cannot be exercised if the resulting reduction in capital would render the company insolvent or so reduce its equity that its authorized borrowing capacity drops below the actual level of borrowings.

In some cases, a company is permitted to issue subordinated notes which are excluded from liabilities in determining the excess of assets over liabilities for application of the borrowing multiple. This effectively increases the borrowing capacity.

Such subordinated notes must be in a form provided by the registrar and are subject to various restrictions as to amount and duration. Unencumbered assets must be held by the company that equal the subordinated notes in amount and mature within six months of them.

Investments: investments most commonly include, for liquidity, cash, bank deposits and government bonds; for income, bonds, preferred stocks, unsecured and collateral loans and mortgage loans; for long-term investments, common stocks and real estate.

A trust company must hold identified assets equivalent to its deposits and GICs outstanding.

Investments in real estate, subsidiaries and premises commonly reflect a utilization of capital funds. Subsidiaries may be formed or acquired by loan and trust companies for such purposes as real estate development or the providing of interim financing on construction, or, with the approval of the minister, other ancillary purposes. Regulations govern the extent of such investments. Subsidiaries are subject to the same investment restrictions as the loan or trust company except for those

specific purposes for which they are formed.

Pledging: assets of a loan company may be pledged for bank loans or other borrowings whereas a trust company, since it must hold unencumbered assets to match its deposits and GICs, can pledge only the shareholders' portion of assets.

Loan corporations: by way of an order in council a loan corporation may act as agent for various purposes, including depository for the safekeeping of securities and the business of a mortgage or real estate broker.

Trust companies: they are specifically permitted by the act to engage in a number of activities. These generally are referred to as ETA or estates, trusts, agencies relationships. They include: acting as a trustee for wills, insurance, bonds or other purposes and receiving related estates and property in trust; acting as custodian for securities and providing safekeeping services; acting generally as attorney or agent of estates and for the collection of moneys from mortgages and other debts; as agent to issue bonds, stock and to manage sinking funds; fulfilling the duties of executor, receiver, liquidator, trustee in bankruptcy, trustee for creditors, guardian of any minor's estate and others; acting generally in the winding up of estates, partnerships and corporations; investing trust moneys; ability to make conveyances and other contracts necessary to carry out its objects; plus the right to collect proper remuneration and reimbursement for such services.

10:50 a.m.

A trust company may decide to establish pooled funds which are made available to the public for investment and may set up common trust funds for the more efficient management of funds held in estates and trusts. With the consent of the Lieutenant Governor in Council, a trust company may be designated as a trust company for Supreme Court purposes. This means they can be appointed by the courts to exercise various offices, such as executor and trustee with respect to estates and persons, without providing the secure deposits which would otherwise be required.

Miscellaneous: every Ontario loan or trust company has the general capacity accorded to other corporations created by charter. They may, provided they fulfil local requirements, operate outside of Ontario. In this connection, there is an informal exchange of views between the various provincial regulatory bodies.

Mr. Boudria: I have a question on the delegation of power that trust companies perhaps sometimes exercise. I wonder if you can enlighten me. Trust companies administer registered retirement savings plans and the like. Often they delegate that, especially in the area of self-directed RRSPs. With the diversification of those plans we have seen over the last four or five years or so, a lot of those things are now handled by people like brokers and that kind of thing.

What kind of authority does your department have over that delegation of authority? Do you ensure that the people the trust companies delegate some of their work to are approved by you in any way? What do you have to do with that aspect?

Mr. Cooper: Our main concern is that the trust company is the one that has the ultimate responsibility. In the kind of situation you are talking about, the trust company would have the obligation, if it appoints an agent, to ensure that the agent is a qualified one. Because there is basically a principal-agent relationship, if there were a default, some negligence or other course of action you could fall back on, the trust company is in the position of responsibility or liability in the circumstances. It is an attempt to try to put some control and protection in place through that kind of vetting.

Mr. Boudria: Are you saying that you have no control over who they delegate that to? You do not get involved in it at this point?

Mr. Cooper: Usually what happens in something like that is that a trust company will come to us and say: "We have a proposal. Would you offer your comments?" What I have tried to outline are the sorts of things we would look at before we would give them, as far as we are concerned, any kind of a blessing to proceed. That is not directly answering your question, but on the other hand it is, because we are in a position to be able to try to exercise some moral suasion if the documentation is not in place to put that ultimate responsibility on the trust company.

Mr. Boudria: But if you are not asked for such advice, you have no regulatory function in that respect?

Interjection.

Mr. Boudria: You place your money in a trust company and the trust company is responsible for it.

Mr. MacQuarrie: If you are in a self-directed RRSP, one of the things to which you referred, I am reminded of a quote in the Economist dealing with the Gower report where you can protect an investor from being fooled, but it is very difficult to protect an investor from fooling himself.

Mr. Boudria: I am not referring to which stocks a particular investor decides to buy. The delegation of authority between the trust company and the broker is what I am talking about. It is a different issue altogether.

Mr. MacQuarrie: You mentioned self-directed plans.

Mr. Boudria: That was an example. There are others, mutual funds and other kinds of things that the money is placed in afterwards and sometimes delegated through an intermediary. You are saying that at present you have no involvement in that area, unless you are asked by a trust company, "Is this a company we should be doing business with?" that type of thing. Then you will offer your comment.

Mr. Cooper: We would pick this up. We do an examination during the year and it is quite likely if this were a significant thing we would be aware of it. We would have to look at it from a legal point of view, whether it meets the sort of criteria I attempted to establish. If it is a serious enough situation, there are remedies in the act whereby one can question licensing, etc. That is a pretty severe situation.

The Vice-Chairman: Mr. Thompson can perhaps enlighten you.

Mr. Thompson: There is a very broad spectrum to deal with. If there is a scheme propounded under the pooled fund regulation, particularly under an RRSP, whereby all the assets would be collected from individual depositors and then invested, not by the trust company per se but perhaps by a brokerage firm or something, that is subject to regulatory control.

On the other hand, for many years trust companies have acted as agents for people in all different varieties of situations where those who are fortunate enough to have wealth can literally take the money to their trust company and say: "Here is money. You take it and invest it for me." On the other hand, some people say, "Let us have an agreement where it is invested with a stockbroker," or else they can take it with them on an agency basis and say: "You keep the records and do the income tax returns for it, but I will do the investing. You just carry out my orders." That whole range of business is there.

Basically in the latter part of it, unless it is, to use the wrong euphemism, a type of mass marketing of some form or other, it is an individual arrangement between the customer and the trust company. That can vary in any number of ways in that it is the basis of the customer determining the best arrangement.

Mr. J. A. Taylor: On a point of clarification in connection with Mr. Boudria's question, I gather Mr. Boudria is getting at the extent to which there could be delegation of a trust company's authority to other agencies, and if so, whether that delegation of activity has to be approved by you in any formal sense and upon whose initiative does that vetting take place. Would that be a fair summary?

Mr. Boudria: Yes. The reason I refer to it is that it is described in one of the briefs we have received. I am trying to find it.

Mr. J. A. Taylor: In other words, is the initiative left to the trust company or is the initiative with the ministry? Or is it something that is merely picked up if it sticks out on an annual review of a company's operations?

Mr. Thompson: If it is in any form of an offering to more than 50 people under a common trust fund, then it definitely requires the approval of the ministry for that arrangement. The form of trust agreement and the agreement with the other party concerned, who is perhaps doing the investing, is also subject to prior approval. There has been a fair amount of activity in this

about two years ago when--this is still a trust--we were concerned by the use of certain forms of exculpatory clauses which would relieve the trustee from liability in certain cases. We have been in that area and in several cases denied the use of certain of these clauses.

Mr. Boudria: What general area did that occur in?

Mr. Thompson: This would be in the marketing of pooled funds, such as a mortgage fund or a common stock fund, where the trust company is not making the investment decision.

11 a.m.

Mr. Boudria: In other words, it is a broker or somebody like that.

Mr. Thompson: Yes. That goes to your concern about delegation.

Mr. Cassidy: This may be relevant. In the operation of a trust company, the interrelation between the registrar and the trust company, even under the existing act, is potentially quite complex. I do not know if you can say a word or two about that; or if I can ask a specific question which relates again to the question of valuation. I do not think I was aware of it last December--a year ago--but I gather that the registrar has the right to actually revalue or change the recorded valuation of trust company assets on the trust company's report and thereby influence the business, because it may, in fact, very quickly wipe out the capital base of the company and prevent it from expanding. Is that correct? Has that power ever been used?

Mr. Thompson: Certainly that is not a matter which can be determined by the registrar on his own opinion. I say that to you in a very considered way because, as you frame that question, the answer is yes. I do not think it would be right that the business of a company could be affected by the whim of one person, especially a civil servant. The appraisal must be based upon evidence. You must resort to the expert as to the evidentiary value of that particular item. It is one of the key points of the white paper.

Mr. Cassidy: This is in the act right now.

Mr. T. P. Reid: But you didn't have that in the previous act.

Mr. Thompson: Yes, we did. The problem, which we will be addressing in the white paper, is that in the act we are only talking about value. We are not talking about what the components of that value are. In its broad parameters, is it a market value on the one hand, or an opinion value based on what circumstances? And therefore, you will see later in the white paper there is also a concern with respect to prudence in valuation. These are the issues we will address.

Mr. Cassidy: Let me pursue that for a minute because

part of the purpose here is to learn from history and to look at the defects and flaws in the existing act, in particular since some of the briefs before us have some questions about the degree of regulation which is provided for in the new act and suggest that it may not be entirely desirable.

Under the existing act, do the registrar or the Lieutenant Governor in Council have the power to either make an administrative ruling as to what the standard of value shall be, or to adopt regulations as to what the standard of value shall be?

Mr. Thompson: There is no regulation-making power. There is no definition as to what "value" is. Value is presumed to be based on an independent assessment made by experts.

Mr. Cassidy: We have heard that if you get 10 appraisers together in a room and ask them what the commonly-accepted standard of value is which would be used by a prudent man, you would probably come up with something related to market value by a willing seller at arms length.

The Vice-Chairman: May I just interject at this particular point? You are talking about property evaluation and so on, Mr. Cassidy?

Mr. Cassidy: Yes.

The Vice-Chairman: All right. Questions in that direction were raised yesterday. There is information to come from the minister which might answer that question. I would ask you to bear with me until that information comes forward from him.

Mr. Cassidy: Does it relate to future policy or past practice?

The Vice-Chairman: Both, I believe. If you will bear with me, I know he is looking at that because it was raised by your colleague.

Mr. Cassidy: If that is going to come up--

The Vice-Chairman: Undoubtedly, but if you would bear with me and leave me--

Mr. Cassidy: I am trying to be the detective and ask, "What went wrong?" to see whether there were tools that could have been used to get at what went wrong. As I listen and watch, this would appear to have been one of the handles that could have been used.

The Vice-Chairman: I would hope you would bear with me. I am pretty sure your questions will be answered. As I said earlier, before you came in, the committee will be receiving information that was requested yesterday in the committee sittings. Obviously, the ministry was not able to put together a lot of the material which was requested, but it is being worked on.

Hon. Mr. Elgie: I indicated that the issue of value was

before the courts. I will have to discuss it with counsel before we endeavour to produce that.

The Vice-Chairman: I was trying to avoid getting into that particular issue, but the minister has clearly pointed out that it is an issue before the courts. He wanted the opportunity to discuss it with legal counsel because that is with the courts.

Mr. Cassidy: Is it a criminal matter?

Hon. Mr. Elgie: Yes.

Mr. Cassidy: Is this committee going to be hamstrung because of things like that?

The Vice-Chairman: We hope not.

Mr. Crosbie: Perhaps I can assist Mr. Cassidy. At the request of Mr. Renwick, we have tried to put together a package of the general principles of appraisal that would be applied by a trust or loan corporation in determining investments. From that material, perhaps you may be able to frame your questions in a way that we can deal with them.

Mr. Cassidy: How quickly will we see that particular--

The Vice-Chairman: As quickly as possible.

Mr. Crosbie: We hope to have some of it tomorrow. As the minister has indicated, our concern is that you will start relating general principles to the specifics of the case. A number of these issues are, quite frankly, before the courts and are being investigated by the police forces.

Mr. T. P. Reid: If they are being investigated, they are not before the courts.

Mr. Crosbie: No, there is substantial civil action before the courts right now.

Hon. Mr. Elgie: Appraisers are being cross-examined on their affidavits right now.

Mr. Cassidy: Wait a minute. The fact that there are civil cases before the courts does not impede this committee from looking into the matter. One risks contempt of court only if there are criminal cases, and no criminal charges have been laid.

Mr. Crosbie: I was suggesting that we could deal with the very legitimate issues you were raising on the elements of value and how they have been applied. That can be done, but we are urging that it be done in some context of the act generally.

Mr. Cassidy: Does the registrar or the minister have the power, or has it been the custom, to issue advisory communications, letters, rulings and that kind of thing from time to time, which would indicate the type of practice that would be expected with respect to such matters as valuation?

Mr. Crosbie: There is no express power under the act to do that--

Mr. Cassidy: To either permit or prevent?

Mr. Crosbie: --at present, but I think you will find that is addressed in the white paper. We will have substantial views on that.

The Vice-Chairman: At this point, I am going to ask the members to bear with me and wait for the information that was requested yesterday. It is only fair. The minister wants to be sure that what he provides to this committee does not put anyone in a position that--

Mr. T. P. Reid: We will argue about that when we hear from him. Could I ask one question for clarification? It will only require a "yes" or a "no."

I understand from what has just transpired that the registrar, under the act previous to the changes in 1982, had the authority and the power to evaluate properties using evaluators, or--what is the term?

Hon. Mr. Elgie: Order an evaluation.

Mr. T. P. Reid: Order, okay. You had the authority as registrar to do that and then say to somebody, "Our estimates are that you have overvalued" or in some cases undervalued "the property you have listed on your annual return." You had that power under the act.

Mr. Thompson: Yes, there is a provision under the act enabling that specific securities be disclosed in the annual return.

Mr. T. P. Reid: What section? Do you know off hand?

Mr. Breithaupt: Also for the basis of calculating the multiplier.

11:10 a.m.

Mr. Thompson: Yes. That is correct.

Mr. Cassidy: Was that power to revalue or to reappraise by the registrar ever exercised in recent times?

Hon. Mr. Elgie: We have not all been at the same committee hearings, but the last time we discussed this at estimates either I or the registrar indicated that in the summer of 1982, discussions with the federal government, the Canada Deposit Insurance Corp., were commenced for a joint evaluation project on the companies involved.

Mr. Cassidy: So the answer is no.

Hon. Mr. Elgie: The answer is we were in the process

that summer of exercising it.

Mr. Cassidy: But you had not done it.

Hon. Mr. Elgie: No, we were in the process of doing it. Then the Morrison inquiry superseded it.

Mr. J. A. Taylor: I notice, Mr. Chairman, that Mr. Cooper is attempting to make a presentation.

It seems that everyone else is responding to other questions. I am wondering whether we are on track or not.

The Vice-Chairman: Yes, we are on track. Before you interjected I was going to get us back--

Hon. Mr. Elgie: Murray wants to make a correction.

The Vice-Chairman: Mr. Thompson is making a correction.

Mr. Thompson: This is a regular routine. As of a week ago we obtained valuations on properties. We are going to provide the committee with a statement with respect to the process.

The Vice-Chairman: Thank you. Mr. Cooper, would you proceed, please.

Mr. Cooper: The next item deals with the first examination in the newly incorporated and registered vehicle. Overall, the first examination makes an assessment as to the progress the company has made to date. Shortcomings and suggestions are taken up with the chief operating officer.

We anticipate the direction the company may take in the immediate future and determine whether or not our findings justify repeated condensed exams on short cycles.

First examination: It has proven useful to conduct a first examination two or three months after activities have commenced. The objective is to note any startup problems, advise and be helpful where possible and generally set the tone for the annual examinations.

The inspection technique differs from that adopted on an annual basis, with less emphasis devoted to an audit examination function based on accounting transactions, and emphasis placed on investment activities randomly chosen for review.

The premises are visited to determine their suitability. Our concern is that the facility should convey to the general public that a sound institution has been established. There is insistence that premises to which the public has access are well identified with the corporate name, are not shared with affiliates and that the front door or counter bear the CDIC decal.

Staff capabilities are determined, as there has been no assurance that staff are well trained and that the division of duties is so arranged as to maximize internal controls. A number

of other matters are considered on this initial examination. For example, appropriate insurance protection is a necessity. We ascertain that this is in hand by viewing insurance policies, looking for coverage over loss of securities, employee fidelity bonding and other incidents. Safekeeping arrangements for cash, marketable investments and custody of customers' property is reviewed.

We have an interest in the form of the documents used by a corporation. The terminology used on guaranteed investment certificates, debentures and savings passbooks is scrutinized. Appropriate clarity is needed. For instance, is the depositor entitled to interest after the maturity of the instrument? Does the quoted interest specify annual or semiannual compounding?

Promotional brochures and all forms of advertising are reviewed for fairness. During the first visit, minutes of the meetings of shareholders and directors are noted. The statute mandates that there be a shareholders' ledger, a register of directors and a bylaw book. These are scrutinized for completeness.

Frequently, there will be a need to contact the company's solicitors to ensure that measures associated with startups are not forgotten. As the company develops, standard operating procedures should be committed to writing and an operations manual built up. This manual should contain forms for internal use with clear instructions as to their completion. Also covered in the manual should be mortgage-lending criteria, consumer loans, loan approval limits and signing authorities.

Our review of such procedures may identify a misinterpretation of limitations found in the act that result in a revision of the procedures.

Accounting matters are of prime importance and the accounting system has to be capable of producing monthly statements in a timely manner. The need to adopt fund accounting is unfamiliar to many accountants and we must ensure a proper distinction between company funds and trust funds, both in records and banking arrangements.

Depending on the circumstances and anticipated volumes, some records will have been computerized using in-house systems or external bureaus as appropriate. Customarily, the public auditors have had involvement in the initial phases and we encourage good co-ordination between the corporation's accountant and the auditors.

As a corporation usually commences mortgage lending early in its life, we will at this time carry out detailed reviews of the early transactions to evidence that appraisals, underwriting and approval routines meet prudent industry standards.

Mr. Cassidy: Would you say that again.

Mr. Cooper: We will at this time carry out detailed reviews of the early transactions to evidence that appraisals, underwriting and approval routines meet prudent industry

standards. We establish that all parties are well acquainted with the act and with CDIC draft guidelines and that the lawyers and professionals are consulted about difficulties.

Mr. Boudria: The procedure that you have just described, do you do any of this if there is a change of ownership of a trust company, or is this only in the case of a new trust company after the initial period of time?

Mr. Cooper: No, prior to the amendments in 1982, even though we had no authority to stop the transfer of the shares, we would attempt to do a lot of the things that are here, but we had no authority to do it in the sense of having to give an approval to the change in ownership.

Mr. Boudria: How long do you do this after the--

Mr. Cooper: This will come in maybe a couple of months or so. Enough time to let them get operational so that we can go in and see how they are set up.

Mr. Boudria: Again referring to three hypothetical trust companies that may have changed hands over the last few years, this procedure was presumably done a few months after the trust companies were taken over by the new owner?

Mr. Cooper: That is a regular procedure, yes.

Mr. Boudria: Was it done in those cases?

Mr. Cooper: To the best of my knowledge it was.

Mr. Boudria: In all three cases?

Mr. Cooper: As far as I am aware. Mr. Thompson, could you--

Mr. Thompson: Yes, that is correct. It was done.

Mr. Cassidy: Perhaps I can pursue that question. You are saying that this type of checking to see whether these various things were being done would have taken place with respect to Greymac, Seaway and Crown respectively, within two or three months of their being taken over by new owners. Is that correct?

Mr. Thompson: Yes, that is correct.

Mr. Cassidy: I see. May I ask, what is "a timely manner"? What is your standard with respect to monthly statements?

Mr. Cooper: We hope to have them by the 15th of the month following, but if we could have them by the 30th, that is an outside limit.

Mr. Cassidy: How do you communicate that your standard is 15 to 30 days?

Mr. Cooper: It could be done in a couple of ways. The

examiner could be on the site and transmit this information to the management. It would probably be followed up by a letter from the registrar to the effect that we would like that financial information.

Mr. Cassidy: Are there some written guidelines that you can give to a new trust company which say these are the normal kinds of things you expect from them?

Mr. Cooper: There are some written guidelines but I am not sure they fall in this area.

The Vice-Chairman: Perhaps Mr. Thompson could answer that. Is there a written guideline which would indicate when you prefer these statements?

Mr. Thompson: A guideline is usually something issued on a broad basis. With individual dealing, there would be personal contact and a letter communicating it.

Mr. Cassidy: Is the CDIC decal a matter of regulations or is that also a case where you would communicate that it is good practice and you expect it?

Mr. Cooper: I believe it is a requirement of the CDIC that the decal be posted in a visible place.

Mr. Cassidy: What about appropriate insurance coverage? Is that a matter of regulation or just a matter of you communicating--

Mr. Cooper: That is a matter of prudent management.

Mr. Cassidy: What is the universe we are talking about? How many new registrations of trust companies have there been in the last six or seven years?

Mr. Cooper: I have been there for about three years and there have been none since I arrived. I am not sure. Mr. Thompson, how many were there prior to that?

11:20 a.m.

Mr. Thompson: There are no new Ontario companies but there are some federal ones. Part of the program was setting up not the mortgage insurance but loan corporations for other financial institutions. That is part of the federal government program, which also comes in under our Loan and Trust Corporations Act.

Mr. Cassidy: If a federal institution or an extra-provincial institution which has not been operating in Ontario decides to open up an operation here, to what extent does it become subject to the kinds of things you have been describing?

The Vice-Chairman: If I might just interject again, I believe a similar question was raised yesterday. The answer is in Hansard, but if you could be brief, Mr. Thompson, inform Mr. Cassidy.

Mr. Cassidy: We just had a lengthy administrative procedure described and I am asking to what extent is that administrative procedure--

The Vice-Chairman: That is why we are asking Mr. Thompson to go ahead.

Mr. Thompson: Again we are going to get into this issue in the white paper and we have advanced some proposals on it. The question again, and we discussed it yesterday, was how far the province can submit a federal jurisdiction or a federal creation to provincial legislation. Within broad parameters, we are advocating that we can submit them to any uniform standard, but on the other side, constitutionally we cannot deny their existence. We had some discussion yesterday, but I think we will be getting into this in the white paper in a very detailed way.

Mr. Cassidy: The act requires a lending criterion of 75 per cent of value as a maximum. Are there other mortgage lending criteria? If there have been no Ontario registered companies in the last three or four years, Mr. Cooper, you must be talking of a standard procedure that exists within the corporation which you inherited. Is that right?

Mr. Cooper: Which was in existence. That is right.

Mr. Cassidy: Can you tell me if there are other aspects to the mortgage lending criteria besides the 75 per cent of value that you would communicate to a new company?

Mr. Cooper: Mr. Thompson went through some of this yesterday in his overview of the investment provisions of the act. There are quantum limits, even though the 75 per cent relates to the value of the property, but we still have to look at the size of the individual investment relative to the assets of the corporation. That is one criterion that is set out in the statute.

Mr. Cassidy: When you say there has to be evidence that the appraisals meet prudent industry standards, what has been communicated with respect to what those prudent industry standards may be? I recognize that question may to some extent overlap the material coming in tomorrow, but it would appear that if there is some kind of standard procedure within the registrar's office, that therefore there is communicated, at least at the outset of the new trust company, an understanding of what prudent industry standards are.

Mr. Cooper: I think what we are addressing here is that an appraisal is necessary. You are getting into an area of evaluating an individual appraisal and that is not really what I am attempting to address at this stage.

Mr. Thompson: I think when you get into the question of evaluation, particularly with respect to mortgages, one of the ingredients must be the marketplace, because otherwise you are affecting not only the ability of the company to compete but you are going to affect the citizens of this province.

We do not have what we would say is the prudent industry standard. The industry has it in varying degrees. By far the majority of this industry is ultraconservative in its valuation, but it has to meet that marketplace competition. Otherwise we are going to have people who cannot get mortgages to buy homes.

I am saying that is just one factor in it. Market value must be a factor taken into account for both competition purposes and for the providing of residential mortgages to the public of this province, because this industry is providing more than half the residential mortgages needed in the province.

We do not have what we say is the capability. The act talks only about value. One of the things we are saying in the white paper is that there should be a test of prudence and a method of valuation. But I think we will see that one of the ingredients in the actual valuation must be market value for the benefit of the consumers in the province.

Mr. Cassidy: You lost me there, Mr. Thompson. I do not understand what you mean.

My question was, when you say to a new trust company that its appraisal should meet prudent market standards, industry standards, what does that mean? Your response is that one of the tests has to be market value. I would assume that one of the tests would be market value. I do not know what other tests there might be, but that is why I am looking for assistance.

Mr. Thompson: I did not want to get into this at this time because we will be getting into it in some detail later. I was just trying to state some broad parameters that must be taken into account.

Mr. Cassidy: Say I have a company, Ottawa Trust, established to meet a great need for a new trust company in the Ottawa area, particularly in the downtown area. I understand that you want my appraisals to meet prudent industry standards, so I ask Mr. Cooper to explain that.

Mr. J. A. Taylor: If he has to explain that, you are in trouble.

Mr. Cassidy: No, I do not think that is reasonable, Jim.

Mr. J. A. Taylor: I do not want to get into a debate on appraisal or technique.

The Vice-Chairman: Order. Mr. Cassidy's question was on the basis of the comments made by Mr. Cooper. He did use those words. I am going to have to allow some leeway to see if Mr. Cassidy can be provided with an answer.

Mr. Cooper: What we are attempting to say is that you have to be able to document, either through an appraisal or some other process, that the value of the mortgaged property meets the parameters of the statute.

We have talked a little bit about the expertise of the people coming into the company. It is assumed that they will know that an appraisal is going to be necessary. Market value, as Mr. Thompson has indicated, is one factor that can be looked at, but the thrust of what we are attempting to do here is to make sure that the company obtains the necessary documentation to support the value that is put on the property. If it is a recent transaction, an appraisal may or may not be necessary--the market value itself may be sufficient--but the thrust is to say that you must be able to document that.

The Vice-Chairman: May I interject at that point, Mr. Cooper? I think we are now back to the questions raised by the member for Riverdale (Mr. Renwick) yesterday, which the ministry is going to attempt to answer. So I will interject at that point and ask Mr. Cooper to continue.

Mr. Cooper: The next heading is, "New corporations, crawl, walk or run." New corporations are no more restricted by legislation than ones of long standing. However, the registrar's office, through moral suasion, encourages conservative practices in a corporation's early years to minimize risk to the depositors and encourage stable and profitable growth.

Mr. Cassidy: Would you repeat that please?

Mr. Cooper: The registrar's office, through moral suasion, encourages conservative practices in a corporation's earlier years to minimize risk to the depositors and encourage stable and profitable growth.

Growth of deposits: a slow, steady growth is encouraged. A rapid growth in deposits produces a large cash balance which normally does not earn sufficient to produce a profitable spread between the cost of borrowed funds and the income. Faced with this unprofitable situation, management may be tempted to invest rapidly without giving prudent regard to the quality of the investment.

Number of offices: experience has shown that branch operations that offer deposit taking services generally require from three to five years to show a profit. Branch expansion is thus encouraged to be at a slow pace within the capabilities of a corporation to absorb the cost.

11:30 a.m.

Branch expansion draws on the time of management to oversee the operations and should be limited to the number and capabilities of management. Branches require more sophisticated accounting and cash control procedures than office operations and capable staff and efficient systems must exist when expansion occurs.

The nature of investments: in the early stages of the corporation's development it seldom has staff fully qualified in all the areas in which a corporation is authorized to invest. The registrar encourages new corporations to stay within their area of

expertise, to expand that area only when expertise is acquired and to move slowly until experience is gained.

Investments generally controlled are large mortgages, commercial mortgages, real estate and consumer loans. The corporation's investment philosophy will be set out in the preincorporation brief and discussed with the incorporators prior to incorporation. The corporation is encouraged to consult with the registrar prior to any proposed changes to the investment philosophy.

Special monitoring: new corporations are subject to a number of examinations during the first year or two of their existence. The objective has been to keep sufficiently close to the operations to spot any undesirable practices before they become significant. The frequency and extent of these examinations will depend on the degree of ability demonstrated by the management.

Mr. Cassidy: Does the philosophy with respect to new incorporations apply only to new incorporations of trust companies in the province?

Mr. Cooper: No. When you are dealing with a new corporation, you are obviously attempting to try to get a solid footing for the corporation. That is the reason for the "crawl, walk, or run" phrase we have used.

Mr. Cassidy: You said a slow and steady growth in deposits is encouraged and that an excessively rapid growth of deposits creates risk because of the problems of investing the cash. You have a lot of cash lurking around and you cannot invest it responsibly?

Mr. Cooper: That is right.

Mr. Cassidy: If it is in cash, you are less likely to be able to make money with it. Would that be any different with respect to an existing trust company that moves into an accelerated mode of growth?

Mr. Cooper: It may not be.

Mr. Cassidy: Is there a philosophy or a policy, or has there been a policy in the registrar's office with respect to an attitude to be taken toward unusual, rapid expansion by existing trust companies as opposed to new ones?

Mr. Cooper: I do not know that the word "policy" necessarily applies. You have to look at the total picture in a situation like that. Does the company have the base resource to be able to deal with that kind of situation? In a new operation you are trying to get a feeling for what the existing management is in a position to be able to handle. Therefore, you are encouraging them to take it slowly, to take it easy, so that you can assess the situation.

It may be that in an established operation the depth of resources will be there for a more rapid measure of growth than in

the new corporation. That may not apply. The new corporation may also be fine. Once it gets operational, it may have all those resources. But our experience has been to try to get the promoters and the new corporation to take it slowly until we are sure they have their feet properly wet and have a good feeling for what they need to build a solid foundation under the operation. That is the best way I can answer your question.

Mr. Boudria: Would that same philosophy we see here have been used in the case of a smaller trust company that was transferred from one owner to another; say, a small company known as MacDonald-Cartier Trust, for instance, that was taken over by a new bunch of individuals?

Mr. Cooper: Without dealing with specifics, yes. If there are people who do not have the expertise or we do not know, we are going to do everything we can to encourage them to take it slowly, to give us a chance to get to know them and for them to get to know our office.

Mr. Boudria: I am trying to find the proper page in the Morrison report which refers to the rate at which one of these trust companies was growing, which was just phenomenal. That was obviously not done on a regular basis in those particular cases, or all this would not have happened. It could not have.

Mr. Thompson: No. That is nonsense.

The Vice-Chairman: There is some supposition being used here.

Mr. Thompson: What you are talking about is getting a company through its most fragile period. I suggest to you that it also applies to a complete change of ownership, except that in a change of ownership you usually have a base of operating experience and people there to handle it. But we are talking about a company that is entirely new, trying to find its niche in the marketplace and get its operations when everything is costing them.

As the white paper will show, the whole industry at one time, at the time of very high interest rates, was facing great problems with respect to getting its money out fast enough to earn the income. In fact, they were in a negative position. One of the problems we had at that time was to say, "How long can this go on?" Competitively, to retain their business, they had to stay in that position. But how long do you allow it to go on, because it is eroding its capital? So you are always trying to blend all these factors together.

What we are talking about is a system of moral suasion in dealing with the people. The white paper will address the issue of the unexpected and unknown, which is the early warning system we now have in place. We stopped one company last summer that was getting into a position where we felt they were attracting borrowings at too heavy a level.

Mr. Boudria: In other words, there was an instance lately where you felt a company was growing too quickly and you

said: "Hold on a minute. You do not have the expertise to grow so quickly and we have to put the brakes on you."

Mr. Thompson: Yes, that is right. That was done last summer.

Mr. Cassidy: I was not aware of this. I suppose Mr. Thompson is not in a position to comment on that specific company, but perhaps I could ask what powers were used to stop that company in its efforts to grow as rapidly as it planned.

Mr. Thompson: The December 21, 1982, powers we have. We did not have those powers before.

Mr. Cassidy: I will address this to Mr. Cooper. You have been in your present position for about three years, is that right?

Mr. Cooper: Yes.

Mr. Cassidy: At about the time you came in, the initial cut was made on Seaway Trust. Seaway Trust had grown from nothing to \$100 million worth of assets in a very short time. But it was in fact a new incorporation about two years before you took your office. Is that right?

Mr. Cooper: Yes.

Mr. Cassidy: Still within that early warning period when you are looking to see whether the company is establishing itself adequately or not?

Mr. Cooper: Yes, it would be, roughly. It is a couple of years. Although if a good base is being developed you should be getting to the stage where the concerns would be subsiding in terms of whether they have the necessary resources, the proper accounting facilities, records and books in place to be able to support what they have to do. In a couple of years, they should be getting that well in hand.

Mr. Cassidy: Is a growth to \$100 million worth of assets in two years or so the normal rate of growth one would expect of a trust company? Or would that be in excess of the growth rate--

Mr. T. P. Reid: You would have them lined up down University Avenue.

Mr. Cassidy: --in relation to the points you were making earlier about crawl, walk or run?

Mr. Cooper: It is not one of those things that has a precise answer to it. I tried to say before that it depends on the resource base from which you are working. Mr. Thompson has elaborated on that. When a company is taken over, it already has its accounting procedures in place. It should have the people who are doing the investing, etc., in place. So you have to make an assessment in terms of what you have in the way of resources when the acquisition takes place. We are talking, of course, prior to the time consent had to be obtained from the registrar in order to

transfer the shares. I think you have to assess the situation at the time.

Mr. Cassidy: Let me ask the question again. Seaway's rate of growth had been extraordinarily rapid for a company of that size and age. Is that right?

Mr. Cooper: It was rapid, as I understand it.

Mr. Cassidy: Is there any company comparable with it which has not hit the shoals?

Mr. Cooper: I am sorry?

Mr. Cassidy: Is there any company with a comparable rate of growth in recent memory in this field in Ontario?

Mr. Cooper: I am not aware of any. Mr. Thompson may be, but I am not.

Mr. Cassidy: Okay. I recognize that you are indicating the philosophy of the department's registrars; its concerns about a slow and steady growth and the dangers of an excessively rapid growth of deposits. I am asking what happened in this particular case. Not only did Seaway go to that point, but it doubled in size again between 1981 and 1982, despite clear evidence that the problems were flagged. It was not that people were unaware of them, because they were there hitting them front and centre.

The Vice-Chairman: If I may, as chairman of the committee, I am going to use some judgement that I hope is acceptable to the committee. We are referring here to a specific situation. In the light of the comments made by the deputy earlier about civil and criminal actions, and so on, I would have to ask the committee's indulgence in not pursuing that specific question.

Mr. Boudria: It is pretty hard to find out anything.

Mr. Cassidy: It is pretty hard to ask questions, Mr. Chairman.

Mr. T. P. Reid: Can I fold up and go home?

Mr. Cassidy: With respect, he was commenting on the registrar's policies in the incorporation and the nursing of new trust companies.

The Vice-Chairman: But I think Mr. Thompson--

Mr. Cassidy: Seaway is one of the most recently incorporated trust companies in the province.

The Vice-Chairman: But if I may refer to the comments made by Mr. Thompson, he indicated to the committee that his authority has been much stronger since December 1982. Am I correct, Mr. Thompson?

Mr. Thompson: Our whole efforts were directed towards

moral suasion. That was the authority we had. We wanted prudent development.

Mr. Cassidy: Okay. So if nothing else--

Mr. Thompson: But on the other hand, we could not stop--

Mr. Cassidy: If nothing else, then, there was a two or three-year lead time when it was evident that moral suasion was ineffective. Action might have been taken to bolster or replace moral suasion, but it was not taken.

The Vice-Chairman: Obviously--as chairman I can say--that was perhaps the reason for the legislation.

Mr. T. P. Reid: If there were tools there to be used that were not used, then maybe we did not need any more legislation. Maybe we needed somebody a little more on the ball.

The Vice-Chairman: By the way, I am not attempting to stifle the committee, but I have to reach some judgements in this area.

Mr. Cooper, would you continue, please.

Mr. Cooper: The next item deals with borrowings.

Mr. Cassidy: I am sorry. If I could just--

The Vice-Chairman: I am sorry. Yes.

Mr. Cassidy: What I am hearing is this: While there was a policy within the ministry, the policy was applied only by moral suasion, while the most recent incorporation in the province was not working.

Mr. Thompson: There was a policy within the ministry and that policy was applied on it.

Mr. Boudria: In these cases?

Mr. Thompson: Yes.

Mr. Cassidy: But it was not working. It was not succeeding in confining Seaway, for example, to slow and steady growth.

Mr. Thompson: It is not that easy. Let me go into the borrowings question. The borrowings question is based upon the multiple, and the multiple is based on the borrowing base, which is the capitalization within which you must stay.

The effect of what we are saying is that if somebody wants to, in its easiest case, put \$1 million into a company, and it has a 12.5 times multiple by statute, it can borrow \$12.5 million. It can beef that up as it proceeds throughout the piece. The more capital they put in, the more they can get out. That was the emphasis on increasing borrowings. It has got to be within that

parameter. The borrowing base and the multiple is the amount that governs it.

Mr. Cassidy: I think I understand that. I also understand that Seaway was coming up with the required capital.

Mr. Thompson: Yes.

Mr. Cassidy: We know now that was basically done by phony transactions and that is how they generated the capital and we will come to that point later.

Mr. Thompson: Some may have.

Mr. Cassidy: What I am saying is the philosophy may have been, "We do not care how you got there, but if you are growing at that kind of rate, there is something wrong because you cannot have a prudently operated business growing at that kind of rate."

Mr. Thompson: I think Mr. Cooper was very careful on that point. He did not necessarily say that because you have growth it is not prudent. There can be prudent growth and prudent rapid growth. I think he was making that point.

The Vice-Chairman: A brief question from Mr. Gillies.

Mr. Cassidy: I did not hear Mr. Cooper say that. Perhaps I could ask him. Is it possible to have that kind of rapid growth and still have prudent operations?

Mr. Cooper: That is what I was trying to get at when I said it depends on the base and the resources that they have. If they have the necessary bookkeeping and accounting records, and if they have the investment staff in their investment area, yes, it is possible to have that.

The Vice-Chairman: Mr. Cassidy, Mr. Gillies has a brief supplementary.

Mr. Gillies: Just following on the same point, we touched on this yesterday, Mr. Thompson, regarding the borrowing multiples. My question is, as you indicated, the registrar had the power to increase the borrowing multiple based on the performance of the company, which is readily understandable.

Mr. Thompson: Right.

Mr. Gillies: But in practice, a multiple had never been reduced. What I would like to get at is--

Hon. Mr. Elgie: We had no power to reduce it.

Mr. Gillies: There was no power to reduce it. Is it contemplated in the changes that we will be making to the legislation that perhaps the ministry should have that power?

Hon. Mr. Elgie: As of December 31, 1982, they now have the power by terms and conditions.

Mr. Thompson: They now have the power by terms and conditions. But I think it is important to know that under the act, at that time, there was an existing statutory minimum of 12.5 times.

Mr. Gillies: Yes.

Mr. Thompson: As I have already endeavoured to point out in my special report, we repeatedly denied requests to increase that borrowing multiple.

Mr. Cassidy: If you had increased it, could you then subsequently reduce it back to the 12.5 times?

Mr. Thompson: No. We have no power there.

Mr. Cassidy: It was only a one-way street?

Mr. Thompson: Yes. Once you got up there--

Mr. T. P. Reid: That was it.

Mr. Thompson: --that was it. Theoretically, you could have got up as high as 25 times, but maybe only used 15 or so.

Mr. Gillies: Mr. Crosbie was kind enough to show me the list yesterday of the multiples in effect for both the provincially and federally regulated companies. There seemed to be a different pattern, as I recall from looking at the list. More of the federally incorporated firms were close to the maximum. They were between the 20 and 25. More of the provincial ones seemed to be in the teens. Could you explain to me why that would be?

Mr. Thompson: Looking at the sizes and history of the institutions, you will find basically that--if I can use the term "the major institutions"--only three of them were Ontario companies.

11:50 a.m.

In the federal scheme, the rest of the majors are there and most of them are at the increased multiple. Ontario has--and I think probably rightly so--many regional trust companies. Their growth is serving a particular region, and until they get into some form of increased branching operation and moving out, they will not really necessarily need an increase in multiple.

Mr. Gillies: The multiple is definitely a function of the size of the company, so that would explain Crown and Canada Permanent and a couple of others being over 20?

Mr. Thompson: Yes.

Mr. Gillies: Thank you.

Mr. Cassidy: Mr. Cooper, you say that it is possible to have prudent rapid growth, that you could have growth which is

both rapid and prudent even with the kind of rate structures we saw with Seaway.

I think in terms of industries generally, if you are gaining market share rapidly, either you have to have very much of an innovation or you basically have to buy your way to that larger market share by means of cutting your prices or improving your network of dealers or that kind of thing. In other words, it is possible to have rapid growth, but if you define prudence in terms of maintaining some kind of a base and maintaining your margins, it is tough to do that at the same time.

Is the finance industry or the trust company industry somehow different from other industries in that regard?

Mr. Cooper: Not that I am aware of, no.

Mr. Cassidy: Was there some innovation that enabled Seaway to gain market share very rapidly and not be subject to the same kinds of economic forces that were constraining other companies from going that rapidly?

Mr. Cooper: They would be subject to the same forces as other companies.

Mr. Cassidy: My third question would be that as early as some time in 1980 the registrar's office was very concerned over the documentation and over multi-unit residential building valuations, which were a very large part of Seaway's business.

Mr. J. A. Taylor: Mr. Chairman--

Mr. Cassidy: I am just getting to the question of prudence and rapid growth.

Mr. J. A. Taylor: Mr. Chairman, if we are going to get into an in-depth review of Seaway, I would like the chairman to so declare because I may take an hour or two or three or four or more myself. I do not mind Mr. Cassidy monopolizing the morning, but I thought we were to get a general overview of new incorporations. The headings are displayed before us, and if we are going to get through that this morning, I wish we would attempt to do so before we get into the in-depth investigation of a specific company. I just point that out. I am not trying to be difficult.

The Acting Chairman (Mr. MacQuarrie): Your point is well taken, Mr. Taylor. I think that to get into the--

Mr. Cassidy: I am prepared to accept an answer to this question.

The Acting Chairman: --details at this point with respect to a particular company is not what was agreed upon. Initially we had agreed to have overviews of the situation, and the next item on the agenda, as I understand it, is an overview of the white paper. Then we get into the details, including questions along the lines that have been put so that--

Mr. Cassidy: I am trying to apply this to one of the most recent incorporations. I do not believe there have been more than one or two companies incorporated since 1978.

The Acting Chairman: I think the questions, so far as they apply to this particular aspect of the proceedings, have been dealt with, and I would ask Mr. Cooper to carry on.

Mr. Cooper: Thank you, Mr. Chairman. The next item is borrowings.

The Vice-Chairman: If I may interject just before you continue, Mr. Cooper, I would point out to the committee that Mr. Cooper has four other sections that it is very important this committee deal with, and I would ask members, if they can, at least to allow us to try to complete those.

Mr. Cooper: The funds that trust and loan corporations take in from the public are generally referred to as borrowings. The amount a corporation may borrow is limited by legislation and is a function of its capital base and its authorized borrowing multiple.

Borrowings consist of debentures or notes of any term issued by a loan corporation; demand deposits accepted by a loan corporation; funds received as guaranteed trust funds by a trust corporation repayable either on demand or in the future; moneys borrowed, either secured or unsecured, except moneys borrowed by way of mortgage on the security of real estate owned by the corporation; interest accrued on all of the foregoing.

The capital base is defined in the legislation as the excess of assets over liabilities, which in essence is the shareholders' equity. In calculating the capital base, we start with the paid-in capital stock, contributed surplus and retained earnings or deficit. To these amounts are added reserves that may have been set up by an allocation of retained earnings. Surpluses arising as a result of reappraisal of real estate used by the corporation as office premises may also be included. To these elements of shareholders' equity will be added deferred income taxes payable and also subordinated notes as provided for in the legislation.

The resulting amount is then reduced by an amount by which the book value of investments in stocks and bonds, other than issues of the government of Canada or a province, exceeds the market value of the investments. A further reduction is made for assets such as goodwill that would have little or no value on the winding-up of the corporation.

The capital base amount is then multiplied by the authorized multiple to give the maximum authorized borrowings.

The borrowing multiple by the legislation gives new corporations an amount of four and a trust corporation of 12.5. Both types of corporations may have their multiple increased by order in council. The legislation places no limit on the multiple that may be granted, but requires that any company with a multiple

beyond 20 must comply with the financial standards set out in the regulations.

Historically, multiples of loan corporations have been increased in two steps up to 10. Beyond 10, multiple increases have usually been granted in steps of 2.5, which same practice has been followed for trust corporations.

For a multiple in excess of 20 to be granted, the legislation provides that the corporation must meet certain financial standards as set out in regulation. The regulation contains five standards:

The quality asset standard requires that 75 per cent of assets must be of a stated value. The cash flow standard requires a matching of budgeted cash income with cash outflow. The liquidity standard requires a matching of demand and short-term deposit liabilities with liquid assets. The strain on equity standard measures the shortfall in market value between book value of federal and provincial bonds.

The earnings standard requires that the corporation must earn a six per cent return on shareholders' equity.

These standards were established in the mid-1970s in co-operation with the Federal Department of Insurance and were to a considerable extent based on the standards of operation set by the well-managed trust companies that were leaders in the industry.

While the financial standards were legislated to apply only to corporations with a borrowing multiple in excess of 20, they have been used as guidelines for measuring the activities of all Ontario corporations.

Borrowing multiple increases are only recommended by the registrar if he has been satisfied that it is not contrary to the public interest after considering the following factors:

Compliance with the legislation: Any corporation that was known to be in contravention of the legislation would not be recommended for an increase and would be expected to demonstrate a period of compliance before the application would be reconsidered.

Profitability: A corporation would be expected to demonstrate a period of profitability over a sufficient period of time to give the registrar reasonable assurance that the company is not likely to encounter financial difficulties.

Sound business practice: A corporation applying for an increased multiple would be expected to be conducting its affairs generally in a prudent manner.

Degree of compliance with the financial standards regulation: With the exception of the earnings standard, it has been found that most of the small, well-managed corporations can conduct their activities so as to comply with the standards after a few years of operation. Failure to comply can be an indication of unsatisfactory management practices.

12 noon

Need for a multiple increase: On occasion, a corporation may apply for a multiple increase when one is not required. This is likely to occur when a corporation is approaching a multiple of 20 and wishes to raise capital. They consider that having a high multiple makes the stock issue more attractive. Multiple increases are not recommended unless the corporation's projected growth requires the increase in the near future.

Adequate capital: While the legislation contains no capital requirements beyond the basic \$1 million, requests for multiple increases to various levels have been considered based, in part, on the shareholders' equity. Before recommending a multiple increase, it has been the practice to conduct an examination of the affairs of the corporation. Whether this would be a full-scale examination or one of lesser intensity would depend on the time since the last annual examination and the perceived financial stability of the corporation.

If, in the opinion of the registrar, there were reasonable grounds for not recommending an increase, the concerns would be discussed with the corporation and a course of corrective action suggested. The application would either be held in abeyance until the registrar was satisfied as to the corrective action taken, or withdrawn to be resubmitted at a later date.

Deposit insurance: An Ontario trust or loan corporation is restricted from borrowing other than on the security of its own assets until it has obtained a policy of deposit insurance from the Canada Deposit Insurance Corp. This restriction is contained in the Ontario Deposit Insurance Corporation Act. The ODIC act was enacted prior to the start of Canada Deposit Insurance to insure deposits in Ontario.

With the advent of CDIC, the Ontario legislation was amended to bring Ontario corporations under the federal insurance plan. The CDIC insures the deposits with banks and with trusts and loan corporations incorporated under federal charter. The CDIC act also provides for insuring provincial corporations that have powers substantially the same as federal corporations. Ontario and federal law is substantially the same.

CDIC conducts its activities much the same as any insurer in that it reserves the right to assess the risk and turn down or cancel insurance coverage for any corporation. CDIC has issued draft guidelines regarding investments, to which they expect insured corporations to adhere. These draft guidelines have proved useful in regulating the industry.

The Vice-Chairman: Mr. Cooper, I am going to ask you to continue because you have very few sections left, and in order to facilitate the committee's deliberations--because we would like to get on with the discussions of the white paper tomorrow--I would ask the committee members if they can remember the sections and reserve their questions. There are only four sections and I would like to get it finished.

Mr. Cooper: The next heading is, "Regulatory Activities of the Registrar: Orders in Council." Petitions for orders in council require the registrar's review and recommendation. Common procedures requiring OICs are: changes in authorized capital; increases in borrowing power beyond the statutory minimum; purchase of a building for premises larger than required for the company's own use.

Registrar's consents: The registrar grants registry which is reviewed at least annually and may be subject to conditions. Other common activities requiring his consent include: increases in basket investment limits; issue or transfer of voting shares of the company to persons who will own 10 per cent or more of the company; approval of full trust fund documentation.

Statutory filings: The act requires that certain documents be filed with the registrar. The significant filings related to routine regulatory activities are: the annual financial statement in the form prescribed by the registrar; semiannual statements of investment transactions; quarterly liquidity statements; financial statements sent to shareholders; and bylaws.

Annual returns: The annual return is a comprehensive financial analysis of the company's accounts with emphasis on the nature of its investments. It is certified by the company's accountants and is supported by audited financial statements for both the company and its subsidiaries. It must be certified as having been adopted by the board of directors.

Other supporting material includes simplified budgets for the coming year, a calculation of the borrowing position and a set of financial condition tests approved by the act. Maturity matching schedules for assets and liabilities have been added for the 1983 year-end. A review of this material provides a basis for subsequent examinations.

It should be noted that regulators at the federal level and in other provinces receive the same annual statements and conduct reviews of the corporations coming under their supervision.

Semiannual returns: Semiannual statements are filed every six months reflecting the changes in investments, and are reviewed to identify changes in investment policy as well as for compliance with the act.

Quarterly returns: Quarterly statements are filed on a calendar quarter basis and are a calculation of the corporation's position with respect to the statutory liquidity requirements of the act. Besides indicating compliance or noncompliance, comparison with previous returns discloses trends.

There is a statutory liquidity requirement so that the corporation must hold unencumbered cash, bank deposit receipts, government bonds and certain other eligible assets to a total of 20 per cent of borrowings, payable on demand or maturing within 100 days.

Shareholders financial statements: The act requires a

corporation to file with the registrar a copy of any financial statement submitted to the shareholders. This means the registrar receives at least the annual audited statement and, for corporations whose shares are traded on a stock exchange, the quarterly unaudited statements required by the exchange.

Besides the comparison of these statements to whatever other statements the registrar may have, they are reviewed to monitor the general progress of the corporation.

Bylaws: The act requires the filing of a certified copy of each bylaw and every amendment thereto. The bylaws are reviewed for repugnancy and compliance with the act by their returns. The act authorizes the registrar to request any information he considers necessary. It is usual for the registrar to require some corporations to file financial data on a quarterly or monthly basis.

Currently, the registrar has requested from Ontario incorporated companies, the reporting of extensive statistical information on a monthly basis. This will assist in throwing up early warning systems on companies that may be developing unsatisfactory trends. The program will be extended to all companies once it has been refined.

Registrar's report: The annual report of the registrar to the minister, provides some historical perspective of the industry. On a company basis, it reports basic corporate data such as officers, directors, and capitalization as well as extensive financial information. This data is based primarily on the annual return submitted by the company. This report becomes a public document available through the Ontario government bookstore.

Canada Deposit Insurance Corp.: Loan and trust companies in Ontario cannot take deposits or borrow from the public unless they are members of CDIC. With respect to Ontario incorporated companies, the registrar reports annually to CDIC concerning the adequacy of a company's assets to provide for the payment of its depositors.

The CDIC has circulated to the industry, a set of draft guidelines relating to borrowing and lending practice which they expect insured corporations will follow. While these guidelines are to some extent based on provisions of the Ontario act that are not duplicated in federal legislation, other provisions supply policy positions taken by the registrar. The existence of the draft guidelines has been of some help in controlling the activities of certain corporations.

The portion of the draft guidelines that relates to mortgage investments is the most significant. A maximum size is established for any one loan. An uninsured loan is limited to 15 per cent of the borrowing base. A loan insured by a mortgage insurance company may be 25 per cent of the borrowing base and, if insured by CHMC, 35 per cent. Condominium properties are subject to larger limits.

Mr. Cassidy: Could you repeat that because I did not

understand it and I am not sure what the borrowing base you referred to means.

Mr. Cooper: That is the per capita and the reserves, etc., that I pointed out to you. A maximum size is established for any one loan. An uninsured loan is limited to 15 per cent of the borrowing base. A loan insured by a mortgage insurance company may be 25 per cent of the borrowing base and, if insured by CHMC, 35 per cent. Condominium properties are subject to larger limits.

12:10 p.m.

Mr. Breithaupt: Mr. Chairman, I believe there are copies of Mr. Cooper's remarks available. Perhaps if they were distributed, the members could follow along and repetitions would not be required. Mr. Boudria has one.

The Vice-Chairman: Are there any extra copies? Mr. Boudria has apparently obtained a copy. Perhaps that is a very good suggestion. If you would continue, Mr. Cooper, while they are being distributed.

Mr. Breithaupt: Perhaps those materials could be routinely available before a witness begins, since people could then follow along and frame their questions.

The Vice-Chairman: Please continue, Mr. Cooper.

Mr. Cooper: The corporations are encouraged to concentrate in residential mortgages and the portion of the portfolio in more risky mortgages is restricted. For example, each of the following classes is limited to five per cent of the total portfolio. Hotels and motels, recreational property, land and nonresidential property not readily adaptable to more than one purpose.

The draft guideline, which defines a large loan as one exceeding five per cent of the borrowing base, limits the total of such loans to 20 per cent of the total portfolio.

Estates, trusts and agencies: Inquiries and complaints from the public may result in special examinations or reviews of certain companies' ETA activities. However, the variety and extent of ETA arrangements are very great and it is not possible to make a comprehensive inspection of each company each year. Normally, the annual examination of a company will include a review of one or more of the ETA activities on a selective basis.

The trust industry is constantly breaking new ground. Flexibility and the ability to apply moral suasion is required on the part of the regulator to keep up with the ever-changing industry. Some activities of recent popularity that were not envisaged when the present legislation was written, are interest futures, commodity futures, share options, equipment leasing, broker-administered retirement savings plans and retirement income funds.

The next heading is, "Consultation Needs With The Industry and Regulators": First with the loan and trust industry.

The Vice-Chairman: All right. If I may just interject. That is a separate section. It is under label Draft 3, section 13.

Mr. Cooper: Thank you. The chief executive officers and other senior officers of many companies have taken the initiative to request meetings with the registrar and his staff to discuss their operation and problems including development of new services and programs. This initiative appears to have resulted in a good working relationship between the ministry and those companies that have availed themselves of this opportunity.

With Trust Companies Association: The president of the Trust Companies Association has developed a working relationship with the registrar's office to discuss problems common to the industry. This has been advantageous both to the industry and the registrar.

With Other Regulators: There exists liaison and communication links between the registrar's office and the federal department of insurance. Importantly, examination reports prepared by Ontario examiners are furnished to our counterparts in Ottawa, under an arrangement with CDIC. In addition, there are ongoing discussions on matters of mutual concern.

Mention should also be made of the trust company administrators' conference. This informal, annual get-together with counterparts in most of the other provinces, has proven beneficial and productive. This meeting is not designed to commit any jurisdiction to a specific course of action; but it does provide an opportunity to exchange information and mutual concerns and to work toward uniform legislation.

The next item, which is section 14, "Complaints and Inquiries": The registrar's office provides service to the public and others in giving information in dealing with complaints. Generally, clients of loan and trust companies are involved, but requests also come from other parts of government, other financial institutions and various other sources. The most commonly requested information relates to deposit insurance or basic data on the loan and trust companies operating in the province.

Interest rates on GIC's and mortgages have fluctuated widely over the past few years, and this has contributed to a heightened public awareness of the trust industry and government's role. This has been reflected not only in the volume of inquiries but also in the complexity.

Complaints: Complaints are normally formalized in writing. The solutions are not easily apparent. The registrar's role is generally that of facilitating dialogue between the complainant and the company concerned, that is, seeing that the nature of the complaint is clearly stated and ensuring the company gives its proper review and response.

It should be noted that one of the objectives of the act is to provide for appropriate trust services to the public. It does not prescribe the administrative procedures and standards that are to be used. A wide variety of financial services are offered by

the loan and trust industry and technical differences from company to company are common.

In a few cases where it appears that a company's policies are out of line with the industry, the registrar is able to persuade the company to review the matter and make changes. For example, reduction of mortgage discharge fees. But there is no authority to force resolution of differences.

Occasionally, complaints lead to special examination or investigations. Some, particularly estate or trust cases, extending over several years of administration, require many man-hours to review. During 1983 about one third of the complaints received dealt with Ontario corporations while the balance mainly concerned other companies, but in a few cases general in nature.

Complaints are broken down roughly as follows: Mortgages 44 per cent; GICs and debentures nine per cent; VEs six per cent; RRSPs and registered home owners savings plans 14 per cent; other estates, trusts and agencies four per cent, and others 23 per cent.

The handling of inquiries and complaints brings a different perspective of the loan and trust industry. It brings us close to the consumers and operating personnel of the companies that may not be reached by our financial examinations. Thus, the two programs, financial examinations and the handling of inquiries and complaints, are complementary. Advertising practices are sometimes involved and this may result in referral to the trust companies' association or the advertising standards council which undertake to adjudicate some problems for various financial institutions. Complaints frequently require the review of sales literature and underlying contracts and this furthers our general knowledge of the industry.

The Vice-Chairman: Thank you, Mr. Cooper. Your presentation was very thorough and it gave the committee a very good background. In the short time we have, are there any questions?

Mr. T. P. Reid: In cases of complaints, if they seem to be substantial--other than the one about information as to being covered by CDIC or whatever--would any of these be flagged to the registrar if they seem to be of a more serious nature than the ordinary run of the mill type?

Mr. Cooper: Yes, that could occur.

Mr. T. P. Reid: Is there any particular mechanism or requirement that that be done? I presume it is more at the discretion of the person. Can you identify who handles the complaints?

Mr. Cooper: We have some personnel in the examinations area who handle the complaints for the loan and trust corporations. You are quite right, they would assess the complaint in terms of whether it is something that is routine in nature as opposed to something that is perhaps unusual and requires some further in-depth analysis--not necessarily from the point of

resolving the problem, but in terms of trying to find out if a practice in the industry is beginning or if there is some other aspect of the complaint that should be looked at.

12:20 p.m.

Mr. T. P. Reid: When we were reviewing the insurance industry, we found a large number of the complaints seemed to come from within the industry itself. Is there any way you could tell us the percentage of the more serious complaints that are about advertising or industry practice? Would they come primarily from within the industry or from other financial institutions?

Mr. Cooper: No. It can happen that way, but the sort of thing we are usually dealing with would be an individual who may have misread an advertisement. That happens very often. It is a technical area and they do not really understand that if they buy a GIC and it has a five-year term, for example, so that unless there is death or some other factor like that involved, it is not something they can go to the institution and ask to be redeemed--unless it specifically provides for this. A lot of complaints are of that nature.

Mr. T. P. Reid: What you are saying is that it would be unusual for another trust company, or bank, financial credit union or whatever to make a complaint about another institution.

Mr. Cooper: I do not think I would want to say it is unusual, but it is not common. It is not what we deal with on a regular basis.

Mr. T. P. Reid: Is there a different mechanism or is there any different approach taken if that does happen? I guess we could divide them very roughly between consumers and other financial institutions. Is there any way in which the complaint would be handled if it was from an institution rather than a consumer?

Mr. Cooper: Yes, with the consumer you are trying to resolve a specific problem for the individual. If you can do that you correspond back and forth with the company, if necessary, or do whatever you can to facilitate the free flow of information and hopefully resolve whatever the issue is. It may very well be that if it is a complaint from another financial institution, before you would get into that sort of thing you would make an assessment of it as the registrar in terms of whether the particular practice that has been complained of is one that is a proper one. You would make an assessment, first of all, under the legislation or any other guidelines that you might have. Yes, there is a difference.

Once you categorize or characterize what the problem is, it may be that the solution or the method of dealing with it is not too much different from dealing with a consumer's complaint.

Mr. T. P. Reid: So the mere fact it comes from an institution as opposed to a consumer would not necessarily aid the people in the branch to bring it to the registrar's attention.

Mr. Cooper: Not necessarily. Although it could very well be. It really depends on what the complaint is.

Mr. T. P. Reid: Let me get to the nub, if I may. I am sure you could see this coming. Are you aware that there were any institutional complaints or, for that matter, consumer complaints about the three companies that brought us here today?

Mr. Cooper: I am not aware of any consumer complaints other than the sort of thing that you ordinarily run into.

Mr. T. P. Reid: Were there any from the institutional side about their practices, about their leverages on the mortgages, the reassessment of properties, that sort of thing?

Mr. Cooper: I personally am not able to answer that. Mr. Thompson may be able to answer that question.

Mr. Thompson: No. I can say from the consumer's standpoint, and I assure you the one thing I do in ordinary times, is that the first thing every morning I read all the complaints that come to us because they are a very good yardstick of attitudes, etc., that are reflected on the public. There were not any consumer complaints.

Mr. T. P. Reid: How about institutional complaints?

Mr. Thompson: Perhaps nobody has said it but you have to measure institutional complaints because these are competitors. You have to take that into consideration.

Mr. T. P. Reid: I appreciate that.

Mr. Thompson: But by and large they are pretty well founded. We had some expressions of concern over the operations of the companies in question but not specific.

Mr. T. P. Reid: Were these by way of letter or by way of phone calls to yourselves?

Mr. Thompson: Mostly phone calls, no letters.

Mr. T. P. Reid: Did this go on for some time before we arrived at November 1982?

Mr. Thompson: No, I would say it was just shortly beforehand.

Mr. T. P. Reid: Would it be possible for you to review your files and give us some idea of what kind of complaints you were hearing? We do not have to know from whom, but when you got them and the nature of them.

Mr. Thompson: I can say pretty clearly that they were after I had a concern.

Mr. T. P. Reid: Pardon?

Mr. Thompson: They were after I had a concern. Well, earlier in 1982. In any event, there is no question, we will review the files and the complaint records.

Mr. Cassidy: I appreciate the time. I will ask two or three questions very quickly. In the first place, Mr. Cooper, because a trust company is either providing service or else it has collapsed, I would judge that the complaints that would come in would be primarily complaints either from the depositors--as you mentioned, the guaranteed investment certificate case--or from small users of the service, i.e., people taking out mortgages.

Mr. Cooper: Generally, that is right.

Mr. Cassidy: The kind of things about the quality of the underlying security is that basically people say, "Well, it is a trust company. If it is in business, I can trust it." They do not have the wherewithal to penetrate to lodge a complaint?

Mr. Cooper: That is right.

Mr. Cassidy: My second question relates to the requirements with respect to the annual returns and the quarterly returns? Within how many days were those to be expected by the registrar's office?

Mr. Cooper: My recollection is that they are due within 15 days of the--

Mr. Thompson: The annual return is two months.

Mr. T. P. Reid: After the fiscal year?

Mr. Thompson: Yes, within the end of February.

Mr. Cooper: That is the annual. The quarterly and the semi-annual is due in a much shorter period of time.

Mr. Thompson: Yes, it is.

Mr. Cassidy: The practice has grown up of basically letting those slide and not worrying about whether they came in time or not. Can you explain a bit why that was the case?

Mr. Cooper: I am not aware that was the case.

Mr. Cassidy: The report of the internal review indicates quite clearly that it was very definitely the case and the fact that 11 of the companies had filed late on their 1982 returns and five of them had not filed all.

Mr. Cooper: With the annual returns, of course, you are faced with dovetailing the requirement to file a return with the completion of the audit of the company. Sometimes, the companies are hamstrung because the auditor has not completed the return. Of course, there is a corporate procedure that you have to go through. Once the auditor has prepared the financial statements they have to go to the board of directors and they have to be approved.

That annual statement that you are referring to is based on the material that is taken off by the auditor. You run into that kind of a problem at year end. I do not think you can necessarily say that we were being lax in terms of how that was being handled. There are some very practical considerations that have to bear in those areas.

Mr. Stevenson: I have just a brief question for my own information. Possibly you covered it on the way through. You gave a list of, for instance, interest futures and commodity futures, lending of equipment and that sort of thing that are not covered as investment opportunities for the loan and trust companies in the present act. Have any changes been made to allow them to deal in those sorts of things or are they strictly outside the legislation?

Mr. Cooper: As long as they are not prohibited by the act, there is a basket clause which they are able to use to put different documents in. That is the sort of thing I was alluding to.

The Vice-Chairman: Having reached the time of adjournment--

Mr. Cassidy: I was not finished.

The Vice-Chairman: I am sorry, I thought you were finished.

12:30 p.m.

Mr. Cassidy: I am sorry, I will be as brief as I can.

The Vice-Chairman: You said two questions, so I assumed--

Mr. Cassidy: I said three. On the question about the returns, there were some that were as much as a year out of date and had not been submitted. That is what I meant. These were the quarterly returns. That is what I was referring to in terms of asking about why that was tolerated, whether there was any particular reason it was tolerated.

Mr. Cooper: I am not aware of any reason; maybe Mr. Thompson is. As I have indicated, there is a very close tie-in with the audit. If there is a problem with the audit, they are not able--and even if they file a return with unaudited figures, we are in a position of saying that, strictly speaking, they have not complied with the statute.

Mr. Cassidy: Okay, my final question is, I can understand new products such as equipment leasing or stockbroker-operated retirement income funds. But on things like interest futures and share options and commodity futures, I am a bit surprised that a trust company would be able to invest in those areas. That is permitted under present legislation, is that right?

Mr. Cooper: I think if it is permitted it will fall

under the basket clause, as I have indicated. That is a very small percentage of the total assets of the company.

Mr. Cassidy: Is it to be permitted under what you are proposing as well?

Mr. Thompson: We have not advanced that, but it is an area that the industry may well wish to respond to.

Mr. Cassidy: Is it restricted, or is it to be permitted under the basket clause in the proposals?

Mr. Thompson: The way the basket clause is worded at present, it is permitted today.

Mr. Cassidy: Okay, I would like to come back to that one later.

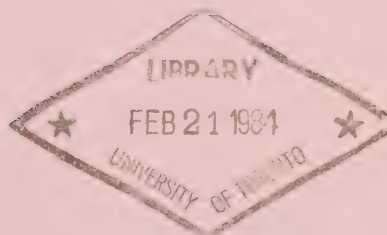
The Vice-Chairman: Thank you. I would remind the committee just before we adjourn that we do not sit this afternoon. I would ask the committee to attempt to be here on time for commencement at 10 a.m. tomorrow.

The committee adjourned at 12:31 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
THURSDAY, FEBRUARY 9, 1984
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Williams, J. R. (Oriole PC)

Clerk pro tem: Richardson, A.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:
Crosbie, D. A., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 9, 1984

The committee met at 10:06 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Vice-Chairman: I see we have a quorum.

Members of the committee, ladies and gentlemen, before we begin, unfortunately the minister is ill and will not be able to be with us this morning. He is at home in bed. However, the minister has assured me if there is any urgent need he will do his best to get back here.

Mr. Hennessy: Bring his bed down.

The Vice-Chairman: It was suggested this morning we might hook up a lifeline, if you want to call it that, between the committee and him.

Mr. Renwick: Could you give him a call? How could he be so lucky?

The Vice-Chairman: He called me about nine o'clock. I knew yesterday he was fighting it off.

I might also point out to the committee we will be passing out a new schedule and a new list of exhibits during the morning. The first week, at the moment, there are two briefs to be heard both morning and afternoon. That is four a day, bearing in mind we are only sitting Wednesday mornings.

The following weeks are filling up. I will put that out for the committee's information and appreciation, plus a list of exhibits. If you would like them, we will provide you with a folder as well so that you may read them beforehand. The brown folder here has briefs in it.

Mr. Renwick: I think I will wait.

The Vice-Chairman: Let us put it this way. Rather than having them lying all over the place, if you would like them, speak to the clerk and he will see you get them. Otherwise, they will be held for next week.

Mr. Breithaupt: Did I hear you say we are just sitting Wednesday morning of next week?

The Vice-Chairman: That is right. That schedule was approved by committee. The chairman tabled a proposed schedule

which was approved by committee. Somehow I had missed it myself for other than the first week.

Mr. Breithaupt: Just Wednesday morning throughout the weeks?

The Vice-Chairman: Yes.

Mr. Renwick: Just one matter before we go on. I asked yesterday about the question of advice with respect to the Institute of Chartered Accountants' rules related to loan and trust corporations, or principles, and also with respect to the interpretation of the trust concept and so on.

The other item I am sure the ministry must have a lot of information on in a simplified form is just what the various definitions of the concept of value are in relation to real property. There seem to be a lot of different concepts floating around. I do not mean we have to come down on the side of any one, but there are real differences of opinion about the appraisal of multiple properties of one kind or another.

I think as a committee we could usefully have some assistance. You must have work that has been done on that or advice you have received on the question of value. If we could have some of that, it would be most helpful to us.

Mr. Crosbie: If I could answer, Mr. Chairman, we have been working on that in the last few days as a result of your earlier request. We are trying to pull together a package of information from the trust association and from the companies.

Mr. Renwick: Appraisers and experts in the field.

Mr. Crosbie: Yes.

Mr. MacQuarrie: I can provide you with a copy of the handbook of the Appraisal Institute of Canada, if you are looking at market value.

Mr. Renwick: That sort of thing is where I would like to start. There must be a lot of sophistication involved in that.

Mr. Crosbie: I think you will find when we get it all before you, the accuracy of the appraisal largely turns on the skill of the assessor in accurately predicting or weighting factors that influence value. We can spell out to you various techniques that are used in a fairly simplified form. The application is difficult.

Mr. Renwick: We would like to have that and, if necessary, to have an expert come before us from among your many advisers. At some point that might be very helpful to us.

The Vice-Chairman: Mr. Renwick, I can assure you they are trying to put together all the information requested by the committee. There was also a request for a table of comparison between the previous select committee and the white paper. The

deputy minister felt that might be available as well.

Mr. Crosbie: Yes, we have been working on the concordance. I do not know whether it has been prepared yet. My staff indicates it is not finished yet, but we are working on such a document.

The Vice-Chairman: Very good, thank you.

Mr. Boudria, you were not here when I informed the committee the minister is ill in bed this morning and will not be with us. He has the flu, unfortunately.

I will now ask the deputy to proceed.

Mr. Crosbie: Mr. Chairman, by way of an opening comment on the white paper, I would like to relate it to the presentations and discussions which have occurred to date in this committee.

I would draw the committee's attention to page 3 of the white paper where the following statement is made: "In the interval following the 1969 report"--that is referring to the royal commission report--"the legislation and the practices of the registrar and his staff continued to rely significantly on the integrity of company officials and their professional advisers. When a company was found to be in financial or administrative difficulty, it was the usual practice to negotiate procedures by which the company would correct its deficiencies."

Such a course of action was reasonably consistent with the recommendations of the 1969 royal commission. The fact there were no other major problems with Ontario-incorporated loan or trust corporations between 1969 and 1982 suggests the system adopted was working reasonably well.

I think it is fair to say the select committee report of 1975, although containing many thoughtful and useful recommendations for changes to the Loan and Trust Corporations Act, did not sound any general or specific alarm about the administrative procedures being followed at that time.

With this history, if you will, I think it is worth repeating the statistics of bank failures in the United States. For the period from 1934 until the late 1970s, on average about 12 banks a year failed in the United States and were covered by the Federal Deposit Insurance Corp.

Mr. Renwick: Could I make a comment now or would you prefer me to wait?

Mr. Crosbie: I am at your disposal.

Mr. Renwick: I do not really believe there are revisionists in the writing of history. However, I simply want to refer the committee to page 10 of the select committee report without reading any of the buildup to the recommendation: "The committee wishes in addition to make the general recommendation that the act should undergo a complete revision and updating at

the present time." It referred to a number of other matters.

The act we were considering at that time included all the amendments, up to and including 1973. While we were in the course of our deliberations there were two amendments in 1974--about which the committee was not consulted but to which we made a passing reference. It was the end of our work and we did not deal with it. Those were the questions of subordinated notes and of mortgage investment companies, which we touched on lately. They were not gut questions really.

Since that time until 1982--with I think one minor exception--not a single statutory change recommended by the select committee was introduced. Any number of changes were recommended, relating not only to the statute, but other matters. I do not want anyone to think there was not a deep concern in the committee.

The report is a very good report. The problem with the report is that it was too polite. There was a very real urgency in the minds of the committee members about what should have been done. I do not want anyone to think we can substitute the Porter royal commission at the federal level for the diligence and the work that went into this select committee on loan and trust corporations.

Mr. MacQuarrie: Are you suggesting, Mr. Renwick, that by following the select committee's recommendations, revising the act in accordance with some of the recommendations at least, that the problems encountered in 1982 would have been eliminated or avoided?

Mr. Renwick: I cannot say that. I can say we would have had a statutory framework and a reorganization of the office of the registrar in such a way that it may very well have become more readily perceivable as to what was taking place. I am not one who says if we had implemented everything in the select committee's report that the problem would not have arisen.

I am fascinated by the reference in the white paper to the credit unions, where it refers by analogy to the way in which the government brought in the amendments to the Credit Unions and Caisses Populaires Act. The reason they were able to do it so speedily and efficiently with the credit unions at the time was that the select committee report on credit unions and caisses populaires was implemented in legislation. Therefore, we had a modern, up-to-date credit union act and when the problems arose that had to be dealt with, it was possible to deal with them speedily and efficiently within the framework of the up-to-date act in such a way that there was no havoc amongst the credit unions and the caisses populaires.

I just want to say it was very clear that, regardless of the revision of the act in 1949, which was the only major revision of the Loan and Trust Corporations Act, the government has been limping along with a Loan and Trust Corporations Act that basically had its origin in 1912. That is what the select committee was saying. Its recommendation was that the act should undergo a complete revision and updating at the present time, and made a number of other comments about it.

I do not want that emphasis to be lost because, in reading the white paper, you would think that somehow or other it had disappeared into oblivion and that no such report had ever existed in the assembly. I am extremely critical of the ministry on that ground.

Mr. Crosbie: With respect, Mr. Chairman, I believe the white paper acknowledges right up front the contribution of the select committee's report and certainly I was not attempting to be a revisionist in making comments about it. What my comments were leading up to was I think there has been a significant change in the economic climate since the time the report was written.

I find in reading the report, and I do not say this in any critical sense, that in a number of the provisions, much of the tenor of the report seemed to be to enhance the capacity of loan and trust corporations to provide more mortgage funds. There was a direction in that way to modernize the process.

I certainly cannot fault Mr. Renwick's comments about the need for revision to the Loan and Trust Corporations Act; that is obvious. What I was trying to lead up to was that I think there was a significant change in economic conditions. It is always impossible to say that if the changes recommended by the committee had been implemented things would have been different. They might very well have been, as you have suggested, so I am not suggesting they would not. I did not go that far either.

10:20 a.m.

If I may continue, the point I wanted to make--

Mr. Renwick: May I make one other point in connection with this? Then I will have expressed my professional opinion.

If one were to read this report about the Canada Deposit Insurance Corp. in 1968, there is absolutely no reference to the fact that in February 1967 on a Wednesday, Thursday and Friday in the Legislative Assembly of Ontario, the Ontario Deposit Insurance Corporation Act was passed to stop the apprehended run on York Trust and other trust companies. The debate is there.

Premier John Robarts, or the Prime Minister, as he liked to be called, participated in that debate. There is no reference in here that CDIC followed on after the Ontario Deposit Insurance Corp. took its place. There is no reference in here, for example, that one of our select committee recommendations in 1975 was the need to increase depositor coverage from \$20,000 to \$40,000.

With those few brief remarks, I hope I express the kind of concern I bring to the table in the discussion of the work we are engaged in at the present time. This report is a mine of information, both with respect to historical development and with respect to the needs the committees saw at that time. I am not suggesting for a moment that they foresaw every problem or that the world would have changed. Indeed, yesterday I said very clearly we did not go into all of the complexities of those investment provisions at the time.

I believe Mr. Grundy was still the registrar at the time, and there is a very polite statement in there with respect to the absolute need that if the registrar requested an enlargement of his office or personnel, he was to get it. We had very real concerns about their capacity to deal with the complexities of the world. We did not like what is referred to here as relying on the integrity of company officials and professional advisers. We did not like that kind of club atmosphere, which haunted that committee from the time it was formed, and we tried to indicate in our way that there had to be a greater sense of distance between the office of the registrar and the industry.

I do not want to spend my time constantly referring to this, but, to the extent that there are omissions or what I consider to be a sense of ignoring this report--I recognize there is a passing reference to it and that at some point we will pick up the recommendation--this report is a whole, a complete report. It says what it had to say and we did a lot of work. It was enjoyable work, but we did a lot in both London and New York trying to get some handle on what was developing in their world with respect to responsibilities of the regulatory agencies.

I wish now that it had been a much more forthright, direct report, because what triggered me to intervene at this point is your sense that there was no urgency in what we were saying--that it was somewhere, could be looked after.

It took us a long time. British Mortgage collapsed in 1965. The run on the collapse of Atlantic Acceptance was at that time. There was a royal commission going on in 1967, if my memory is right. There was the apprehended run on York Trust. I think there was a chap named Sinclair Stevens involved at the time. Then we went on with other work because we had been given the broad mandate. We did not get around to completing this report until just before the provincial election in 1975, so there is a great deal of--

Mr. Crosbie: I appreciate your historical overview because you are obviously much more familiar with this than I am. In reading the report, the terms of reference, I read it as a follow-on from the general review of corporate powers that was taking place in the government. I did not read it as an effort on the part of the committee to deal specifically in any degree of urgency with issues arising directly out of Atlantic Acceptance or any previous failure.

Mr. Renwick: The reason the select committee was struck was the concern John Robarts and Leslie Rowntree had about what was happening to the business community and they said we had better do it. They struck the committee with that broad term to deal with all aspects of it. They knew it was going to take a hell of a long time. I think it was the longest continuing, floating select committee in history because of the margin of work that was required. I just want to make certain people understand that was an urgent and important report.

The Vice-Chairman: I agree with some of the concerns you have expressed to the extent that I have asked the ministry to try to provide us with the various recommendations in the report that committee made and any arguments and so on. I know the report has been thoroughly examined within the ministry. The deputy and the minister have assured me they are going to try to put something together for us so that will be available to the committee.

Mr. Gillies: Following on some of the thoughts Mr. Renwick brought up, and perhaps I am speaking for some of the newer members, I am keenly aware that some of us are not familiar in detail with some of the work that was done in the late 1960s or even in the committee in 1975. I have a great deal of concern about the scope of the work this committee might be able to do.

For instance, I did a bit of reading yesterday and found that, looking outside Ontario for a moment because I do not think we can look at this whole question of regulatory failure in isolation, the problem of bank failures in the United States has been addressed to the extent that I understand officials of the federal government in the United States can move in if an institution fails on a Friday and have it reopen under new ownership on a Monday. I do not know how they do that. I know that we apparently cannot.

I wonder whether the committee should be considering, as part of our study at this point, looking at what is being done around the world in this whole area and where we might be able to pick up some valuable ideas outside the studies that have been done in Ontario.

The Vice-Chairman: If I may respond, I believe the deputy minister, if I heard the first few words of the next section of his statement, was going to refer to this issue and I would like to suggest we get on with the statement. If you feel there is some comparison, that might be something you will want to propose to this committee. How it is done, I leave up to the members of the committee.

It seemed to me he was beginning to say something about the banking situation in the United States, so perhaps we can wait until that statement is completed and then, as I say, if something does arise out of that I would be most happy to entertain any motion.

Mr. Gillies: I will be very pleased to hear it, Mr. Chairman.

Mr. Vice-Chairman: Mr. Cassidy, I am trying to get the deputy's opening statement on the white paper. Does your question refer to his statement at this point or is it a procedural question?

Mr. Cassidy: I really wanted to make a comment relating to Jim Renwick's comments about the select committee on company law.

When I came into this place, the select committee had already been operating and it seemed destined to operate in perpetuity. Because of that, I think there was that perception by members of the Legislature which perhaps dimmed, to some extent, our appreciation of the work the select committee did.

10:30 a.m.

Having had only a brief chance to look through the report on trust companies, I want basically to back up what Jim is saying, that the Legislature seldom even gets the chance to propose in this way. You mention 1975 when there was a carefully thought-through proposal for a trust company legislation amendment which, if put into place could--this is in answer to Mr. MacQuarrie--have gone a long way to preventing the kinds of problems we had in the early 1980s. I just notice two things in the--

Mr. MacQuarrie: You cannot say that with any degree of assurance.

Mr. Cassidy: I just cite two specific points. In their section on directors and officers, the select committee very specifically noted the anomaly that I was raising the other day, that the duty of care on trust company directors and officers, far from being superior to what existed under the then Business Corporations Act, obviously is less than what we have now.

Far from being greater, in fact it is less. The select committee was quite explicit in saying it found the common law obligations on trust company directors were quite inadequate. They seemed to be based on some ancient cases in British law in the United Kingdom. They said there should be a very specific duty of care that should apply not to just directors but also to officers, which would mean general managers, accountants, vice-presidents, treasurers and people like that. If that duty of care had existed, one has to ask whether the people who were working for Player and Rosenberg and so on would have tolerated what was going on or would have not broken ranks earlier and said: "Up with this I cannot put."

The other point is that although the select committee did not apparently recommend the power to step in and intervene, as we had under the bill in December of the year before last, they certainly talked about the need for much closer co-ordination in terms of examinations and regulation between the Canada Deposit Insurance Corp., the federal superintendent and the provincial registrar. They talked about a very substantial change in the concept of trust company regulations. Instead of looking at just the narrow area of finance, which has essentially been the picture up until now and up until a year ago, the regulators would be looking at a broader area in order to look at the examination of the company's practices, policies and procedures.

We had companies that were technically within the law but by any other standard of judgement were wildly outside of the law. The registrar and his staff were not basically looking at that. I sort of back that up and--

Interjection.

Mr. Cassidy: I realize this is like trying to pick up spilled milk but it has cost us, as taxpayers, several hundred million dollars because of the failure of the government to pick up on the worthwhile work that was done by the select committee back in the mid-1970s.

The Vice-Chairman: No one is questioning, to use your words, "the worthwhile work that was done by the committee," I assure you.

Mr. MacQuarrie: (Inaudible).

The Vice-Chairman: Mr. MacQuarrie, please. You have made an assumption and obviously it is your right to make an assumption, but I do not think we are in a position to do so. However, I do think we should ask Mr. Crosbie to continue with his statement.

Mr. Crosbie: Thank you, Mr. Chairman.

Mr. MacQuarrie: I question his conclusions with respect to the obligations of directors.

Mr. Crosbie: I was just about to relate a bit of the historical record in the United States. I was commencing with the 1934, which was the year the Federal Deposit Insurance Corp. was brought into force. Prior to that, banks were failing at the rate of 2,000 or 3,000 a year in the Depression.

As the result of the introduction of that legislation, the bank failures in the US from 1934 until the late 1970s averaged about 70 banks a year. However, in the last three years between 40 and 50 banks have failed in each year. Whereas the failures that occurred in the earlier years almost without exception tended to be situations where some criminal act of the owner or other person, such as some fraud, destroyed the bank, the more recent failures have tended to be economic failures.

We are told that the US Federal Deposit Insurance Corp. is currently geared up to handle 100 failures a year. They do not anticipate this 40 to 50 failures a year rate to decline in the next decade.

Interjection

Mr. Crosbie: Twelve. Part of this is attributed to the deregulation on the liability side, the types of investments that banks are allowed to make.

Mr. Cassidy: How many banks are there in the United States?

Mr. Crosbie: I really could not tell because this includes state banks and federal banks. There are thousands.

Mr. Cassidy: The figure of about 15,000 sticks in my mind. It is in that range, is it not?

Mr. Crosbie: Yes. Here in Ontario I believe we were caught off base, so to speak, in failing to adjust our regulatory procedures adequately in the light of the very different economic conditions that developed in recent years. But the white paper is a plan that recommends changes in the regulatory process and, for that matter, in the process by which financial institutions have traditionally applied a large measure of self-regulation.

I find it very interesting to note that a number of the briefs submitted to the committee are decrying the recommendations that involve more government intervention and more bureaucracy. Certainly it appears that one of the major issues that will be before the committee as you listen to the briefs to be presented to you will be this very basic question of what serves the public interest best. Is it more regulatory intervention in the operation of corporations? Is it more detailed legislative control? Is it improved industry self-control? Or is it perhaps more or less each of these approaches?

I believe I fully appreciate the desire of the committee members to understand the background against which the white paper was written. I also believe that much of this background has been indicated in the body of the paper and in the various other reports that have been made available to the committee. Without raising what I know to be a very sensitive issue with some members, I would respectfully ask that to the greatest extent possible the white paper recommendations be dealt with in the context in which they are presented in the paper and that reference to specific factual situations that are now the subject of civil litigation and may be the subject of criminal investigation be avoided.

I sincerely believe the white paper can be dealt with very satisfactorily in this way and that the ability of the committee to reach responsible conclusions on the merits of the recommendations to improve this important part of our financial institutions will not be impaired.

The scheme for our presentation on the white paper will be to deal seriatim with the conclusions and recommendations of the report as they are set out on pages eight to 12. For each numbered paragraph a slide will be presented behind you that briefly summarizes the white paper comment. At the same time I will comment on the paragraph and, where applicable, relate it to other material.

I would seek your guidance, though, Mr. Chairman. Would it be the wish of the committee that in presenting the white paper in

this way we should read each recommendation and then comment on it, or should we leave it up to the members to read the white paper they have in front of them? We will be quite happy, in order to keep the pace of the committee at a uniform level, to read the recommendation first and then comment on it.

Mr. Renwick: Mr. Chairman, in view of the question the deputy has posed, perhaps this is an appropriate time to talk a little bit about what kind of report we are expected to make and how we are to deal with it. I would certainly appreciate hearing what Mr. Breithaupt has to say about how he thinks the report will come out.

In other words, is it our obligation on the reference to us to take each of the conclusions and recommendations in the white paper and have a statement of it, then the committee's comment on it and then move on to the second one and the third one? Is that what we are going to end up doing? That is obviously one possible format.

I think we have to get some sense of what our report is going to look like without necessarily being tied to it too much in order to provide a little bit of direction to our work. Maybe it is too early to structure it, but I think we should think a little bit because the deputy has specifically raised it. Are we to take each one, then have a discussion of it now and then move on to the next one?

10:40 p.m.

The Vice-Chairman: If I may interject, Mr. Renwick, it would be my suggestion that we deal with each recommendation that is in here and allow it to be presented. Obviously, the committee members are then going to want to have some background about the recommendation that is there, why it is necessary or if it is strong enough, whatever that might be. I think the committee needs that because we are eventually going to have to report as a committee on our review of the white paper. I think that is very important. However, we must also bear in mind that in addition to the questions we ask here we will also have the opportunity to hear people who are directly involved in the field and others. If you have gone through some of the briefs, you will see there are divergent opinions between some of the organizations.

I think we also need that information to be able to do our final report to the Legislature, whatever form that takes. But I am at the committee's direction. I would suggest we hear each recommendation and I will allow all the flexibility I can so that questions over each one of these recommendations can be raised. I would also allow for relatively free questioning when we are hearing the presentations.

Mr. Crosbie: Just for the committee's information, the approach we used on the white paper was intended not as an in-depth exploration of each recommendation at this time, but rather a form of overview. We wanted to review the recommendation, to comment on it so committee members would be as aware as

possible of its significance. If clarification of the white paper's language is required, we can provide it. Also, if there were any specific issues arising out of any of the recommendations on which you wanted further research or report, we would get that information and be able to have it ready for the committee at some later date.

Mr. Breithaupt: I think we have the opportunity, first of all, of having the proposals reviewed by the deputy minister. I think a very brief discussion on each of these items would at least set the framework in which that recommendation is made. Then over the next several weeks we will have a variety of submissions to us which may deal with one recommendation or another. Some of them may not be particularly controversial, and by the the last day or two we will have an opportunity to make our comments on how we see the validity or use of these recommendations.

I think we should remember that the result of these recommendations, and perhaps our comments upon them, may lead to legislation. At the time the legislation is brought forward, the committee stage of that bill may well bring further recommendations and representations from public groups. Then we would, to an extent, be repeating much of the material and following the same framework we are now.

It seems to me the task of the committee is to look at the 40 or so recommendations that come in this report and to comment on the usefulness of those that are particularly controversial or referred to otherwise by the people who are going to be appearing before us. Also, no doubt, it should be our task to make the odd political observation as to whether if such a thing might have been in place other things might or might not have happened.

I think if we do it that way--have a presentation, hear our witnesses and then return to consider in depth each of these items with the benefit we will have from the research staff who will have sorted out any references to any one of them--we will have a useful framework in which to place the eventual legislation that is going to come forward.

The Vice-Chairman: Are there any other comments? Do we have concurrence in the methodology that is laid down?

Mr. T. P. Reid: Mr. Chairman, I am concerned about three or four issues. The first one is the deputy's statement about the sub judice rule and that he does not want us to talk about the facts relating to the three companies that have brought us here. I get the impression, perhaps unfairly, that we are not to discuss Greymac, Seaway and Crown at all.

I find it difficult to accept the deputy's position in this regard, because of my understanding of the sub judice rule, which, as I am not a lawyer, may be imperfect, but if we are going to close off all discussion on that, I would frankly like to have a legal opinion of what the sub judice rule means in relation to the ongoing fraud investigation by the police and also in regard to civil litigation. My understanding of the rule is that in civil litigation the matter is heard by a judge who presumably will not

be influenced by matters that go on before this committee. That is a broad brush approach.

I am really concerned that we are here because of what, in fact, happened. I would like to know exactly what happened. I would like to know, following Mr. Renwick's point earlier, why these matters were not dealt with after the report of the select committee. Was there sufficient legislation, was there sufficient power under the existing act to deal with these matters? Why did they get out of hand? Why have charges not been laid? Was there incompetence within the ministry? Could certain actions have been taken under the existing legislation? How did all these things develop?

Frankly, I think part of our exercise has got to be related to the accountability factor and the regulatory process within the ministry. I do not think these questions have been adequately answered, and I get the distinct impression from comments made by the registrar, by the minister and by the deputy that these matters are somehow not related to the white paper and the Morrison report and everything else we have in front of us.

I, for one, do not want to restrict the questions I may have simply to the recommendations that are here. As a matter of fact, I find it difficult to understand how we can relate these recommendations with ignoring the problems that brought us here in the first place.

The Vice-Chairman: Mr. Reid, if I may comment, I presume you have directed the question to me as committee chairman about obtaining some legal opinion on what we can or cannot deal with in respect to that point raised by the deputy minister.

I somehow feel we are exceeding our terms of reference. I stand to be corrected, but my understanding is that we are tasked with reviewing the white paper on loan and trust corporations legislation. That is my understanding of this committee's deliberations. The advertisement that went out in the newspapers requesting those who wished to be heard referred to the white paper.

I do, however, quite understand that there are other questions the committee members might have, so if the committee would leave the responsibility to me to try to ascertain just what areas we can cover, I will report back to the committee on that. Then committee members can challenge me if they wish on what areas this committee should and should not deal with. If they bear with me in the meantime, I think Mr. Breithaupt has made a suggestion that we can at least work within today. If I can have the concurrence of the committee in that regard, we will proceed that way, and I will attempt to respond to the committee on those other directions.

Mr. T. P. Reid: I have just one comment. Even in the introduction and summary, the third or fourth paragraph deals with the very matters that have brought us here today. I reiterate that I do not see how we can deal with the white paper in isolation from the history of those three companies.

10:50 a.m.

Mr. J. A. Taylor: I want to speak to that question. Frankly, I cannot see you dealing with this area of sub judice in generic terms. Rather than you telling us in advance and in generalities what we cannot deal with, I would rather a flag go up if you feel that the committee in its deliberations--

The Vice-Chairman: I can certainly do that.

Mr. J. A. Taylor: --which may be sub judice or for some other reason and may not be appropriate for this committee to discuss.

The Vice-Chairman: If that is acceptable to the committee, I am prepared to live with it.

Mr. J. A. Taylor: I would rather be constructive and then think positive. That is my supplementary in connection with that issue.

The Vice-Chairman: I am quite prepared to live with that if that is what the committee decides.

Mr. Renwick: What Mr. Taylor says is quite consistent with the way I think it should go. If somebody wants to raise a flag about interfering in some way with the rights of people involved in investigations or litigation, then that is the proper way.

What is concerning me is the other aspect of what Mr. Reid has raised. That is, that the ministry and its officers will not be forthcoming to the committee as to the reasons why they want to make these various changes to the extent that their origin was within the débâcles which occurred in the fall of 1982 or 1983, or whenever it was.

That is my concern, that somehow or other you are going to feel you are under a cloak if we were to ask you: "What went wrong in the ministry or what was wrong with the legislation," either one of those two, "that led to this recommendation? Does it relate to the débâcle which occurred with respect to the group of companies which have been subject to the investigation?" That would concern me a great deal. Otherwise, we simply will be engaged in an academic exercise. I want to be as direct and clear in our report that our recommendations about the comments in the white paper are directed towards correcting what was wrong, that it be not just some sort of generalized review that is being undertaken. It is designed to protect the public against what happened recently.

Mr. Crosbie: Could I give a specific example of how I think we can deal with this in a way that will overcome the problems Mr. Renwick refers to. We can deal with the question we have talked about at some length about the valuation of assets and what the impact on the borrowing base of a trust company is if assets are overvalued and loans are made in excess of the true value. We can deal with that in a hypothetical sense and I can

give you a specific numerical example of how it would all work out and how it would have an impact. What I would like to avoid is somebody asking me, "Go through numerical example and apply it to Seaway Trust specifically."

In the issues before the courts now, appraisers are being examined in the court process on evidence of what the values are and the value of properties and proper mortgage lending ought to have been in the circumstances. Those are the very issues before the court. I would not want to be put into the position of having to give an answer to this committee in the very precise terms of the issue that is before the court. But without having to get into those specifics of the fact situation, we can certainly indicate to you that the valuation of property for the purposes of mortgages was an issue.

Our concern was that the land was overvalued and the mortgages were overvalued. Here is how it impacts when you apply that formula to the borrowing base and when you apply the multiplier factor to a borrowing base that has been inflated by inflating the mortgages, how it flows through the whole system. We can do that, but I do not think we have to come back and say, "The Cadillac Fairview properties are worth X millions of dollars and therefore here is how it works out precisely." That is what we are trying to avoid because they are the very issues that are before the court.

The Vice-Chairman: Thank you, Mr. Crosbie. It does appear at the moment that we have some level of concurrence among the members as to how we should proceed. Mr. Taylor has made the comment that I will perhaps have to be in the position, if I understood him correctly, of making a ruling one way or the other as we proceed if there is a flag. If I read the committee right, I would like to proceed on that basis. Do I have that indication from the committee?

Mr. Cassidy: It seems to me, in relation to the white paper, that on pages 6 and 7 several broad principles are put forward.

The Vice-Chairman: You would like to discuss them as well?

Mr. Cassidy: I think that would be more helpful than starting on the specific recommendations because the very first recommendations get us into plumbing, mechanics, whether or not there should be a commissioner and that kind of stuff.

The Vice-Chairman: Fair enough. That would not present any difficulty, Mr. Crosbie?

Mr. Crosbie: That was where my next comments took me.

The Vice-Chairman: All right. Members of the committee, I am going to rule that we will proceed then. Would you continue?

By the way, may I just tell you what the paper is that you have been given. It is a table of concordance, which basically shows the 1975 act, which was referred to in this, and compares it with the 1983 act; it compares the sections. That is part of what was requested by the committee.

Mr. Cassidy: I just wanted to get some feeling as to whether the committee had tried to determine how long it wants to spend on this presentation with respect to the white paper.

The Vice-Chairman: As chairman I would like to get through it today. You have been given the updated lists of people and groups that have requested to be heard by the committee. If it has not gone out, perhaps you can make sure Mr. Cassidy has a copy.

It is quite a list. The first week has two in the morning and two in the afternoon on every day except Wednesday and the next couple of weeks after that are filling up very rapidly. Are all the briefs now in? They were due in February 3. It appears that this schedule then may be relatively fixed.

Mr. Breithaupt: Perhaps I can speak to the schedule when we have the opportunity.

The Vice-Chairman: May I deal with the schedule later in the day.

Mr. T. P. Reid: This will take 30 seconds. I just want to refer members to Hansard for Tuesday, November 15, 1983, and Dr. Elgie's statement to the Legislature. I will just read one short paragraph to put it into context:

"I realize these three documents add more paper to an already large file of material that has been made available to members of this House. It is my hope that all of this material will not only enable the members to appreciate the magnitude and complexity of the issues we are discussing, but will also enable them to understand some of the background facts that are so important to the position the government has taken. I look forward to a full discussion of these documents in committee."

The Vice-Chairman: Thank you, Mr. Reid. All right, Mr. Crosbie, at that point would you please proceed.

Mr. Crosbie: The white paper explores 10 conceptual areas, which contain proposals that would lead to changes in the law and administration. They are designed to improve the ability of government regulators to discharge their responsibilities and to establish clear rules for all involved with loan or trust corporations. As we go through the specific recommendations in the white paper, I would remind members of the underpinnings of these proposals. The following is a condensation of the comments on pages 6 and 7 of the white paper.

1. It is not necessary, and it would be unfair and costly, to force a radical restructuring of the industry because of recent abuses. What works should be retained; what calls for changes should be changed.

2. There is a particular need to clarify and toughen the conflict of interest rules and the standards of those professionals involved in transactions where conflicts of interest may have an improper influence.

11 a.m.

3. There is a need for a more active regulatory effort than served the public well under quieter times. At the same time it is essential to ensure this effort also reflects good business sense.

4. There is a need to restructure the regulatory administration of financial institutions generally and of the loan and trust corporations in particular to achieve a more effective and responsible regulatory effort.

5. The different financial strengths of loan and trust corporations must be reflected in the regulatory process and would involve discretion to increase various powers of corporations based on growing financial strength, proper experience and capability, and a track record of regulatory compliance.

6. A balance is required between appropriate activity restrictions on some companies and allowing other companies to have specific fiduciary powers and engage in commercial lending. It appears appropriate at this time to provide a specific but narrowly limited commercial lending power to the strongest and most experienced trust companies.

I would now turn to the specific proposals which I think come back and deal with those issues or concepts.

Mr. Cassidy: Would it be possible to deal with point 1 first? That would be more useful because this is the guts of it. After you get through those principles, everything else is housekeeping.

Mr. Crosbie: I would agree with what you are saying but if we do, we are going to lose--it is difficult to take the white paper and directly relate it to these specific concepts. The concepts come up in a number of different recommendations. It would be difficult for me to take point 1 and lift out of the comments I have the specific recommendations dealing with point 1. What you will find is that as we go through the recommendations we will quite adequately deal with those six points.

The Vice-Chairman: May I interject at this point, Mr. Cassidy. I suggest we allow Mr. Crosbie to continue. If the explanations for those points you are referring to--I quite recognize them; I am looking at them myself--if you feel during the discussion that area has not been hit and reasonably discussed, I will try to allow some flexibility so it can be more properly answered to your satisfaction.

Mr. Cassidy: I would like to accept that for most of the points, but on the principles in the first point some discussion might be appropriate now. I would like to ask Mr. Crosbie,

speaking on behalf of the government in the absence of the minister, to outline the differences in approach between the federal proposals for radical restructuring which were eventually shelved and what is here, and, second, to go through the question of why there is no demonstrated need in the thinking that took place within the ministry, and, third, to confront the question of controlling shareholdings which will run through a lot of what comes later. Therefore, the question should be raised and to some extent elaborated on now as to the ministry view.

Mr. J. A. Taylor: Mr. Chairman, on a point of order or procedure: I wonder if we could have some indication how long Mr. Crosbie will be with his prepared statement.

Mr. Crosbie: It is difficult to say. I anticipated we would take the better part of the day to go through it.

Mr. J. A. Taylor: Perhaps we can approach this thing in an orderly way; that is all.

The Vice-Chairman: I thought we had agreed to that.

Mr. J. A. Taylor: If we put all this in, we are never going to finish your statement. I did not have any idea how long it would be. I do not want to curtail any of the freewheeling discussion, debate and questioning, or whoever we have to bring in. If a format is laid down, I would just as soon have that unfold and pick it up from there; otherwise, forget about it.

Mr. Cassidy: Mr. Chairman, on a point of order: I asked whether we could deal with those general questions and was told we would. The moment I asked some questions about it, Mr. Taylor came in as he has about five times before when I have raised questions, basically to interfere.

Mr. J. A. Taylor: I do not want to contradict you, Mr. Cassidy, and I do not want to be unkind. I appreciate your knowledge and your interest in this subject and the fact that you have monopolized most of the time so far. I am not criticizing you for that.

What I am saying is that I think that we should treat this thing in an orderly way. We have had our overview of the statute itself in a section form. We have had the pedestrian overview in terms of how these companies get incorporated and the considerations and so on. Now we are into this presentation by the deputy minister, presumably as a part of the examination of the proposals.

I would think that the object of our exercise ultimately is to review and make recommendations in regard to the proposals in the white paper. I am sure there will be other areas in which the committee may want to make recommendations. Let us get that done. Maybe there is room for recriminations, but let us get the constructive stuff done first so that we can make some positive contribution. That is all I am saying.

Mr. Breithaupt: Perhaps we could come to some conclusion as to a pattern with which to deal with this material.

The Vice-Chairman: I thought we had.

Mr. Breithaupt: It does not seem to have been too clearly understood by the members of the committee, at least certainly not by me.

Perhaps if we had Mr. Crosbie complete his remarks this morning, we could spend this afternoon reviewing those comments he has to make and asking questions of him with respect to the government policy matters, the kinds of things that have been referred to by earlier speakers.

We are then going to have the variety of presentations. It also seems to me that the two which are set for the last week, the Ontario Mortgage Brokers Association and HFC Trust Ltd., should be moved into slots earlier in the previous week so that the last week is available for us to discuss entirely the particular points and come to certain conclusions.

If you allow presentations to be made during the last week, I think you will not only leave far too little time to discuss what we want to do, but also, somewhat unfairly for our research staff, require them to try to put those additional comments into their reference material, which I would hope would be fully available to us and complete when we begin on the morning of Tuesday, February 28.

The Vice-Chairman: May I interject at that point? The clerk is not here at the moment, so I am not aware whether those groups you mentioned asked for specific times. If they have done so, it might be difficult to change. I quite obviously agree with you that we could approach them and see if they can be moved ahead. I do not want to see any open time.

The time for requests to be in, which was February 3, has passed. I think probably we can accommodate the type of thing you are talking about.

Mr. Breithaupt: I think we will have to have them moved, even though it may not be their first preference, in order that the committee can approach its work in an orderly fashion. If we do that, we will have the last week to deal with a framework of comments on the recommendations and we will be able to review fully the themes that my colleague, Mr. Reid, referred to in his quotation from the minister's statement.

If we could have Mr. Crosbie make his overview this morning, then this afternoon we could perhaps commit ourselves to questioning Mr. Crosbie.

The Vice-Chairman: Are you making that in the form of a--

Mr. Breithaupt: No.

The Vice-Chairman: It is just a suggestion to the committee?

Mr. Breithaupt: It is a suggestion.

The Vice Chairman: It is suggested to the committee that we allow Mr. Crosbie to continue uninterrupted for this morning to complete his presentation and then retain this afternoon for questions to Mr. Crosbie.

Mr. MacQuarrie: In fairness to Mr. Crosbie, how much time does he anticipate he needs without interruption?

Mr. Crosbie: I think there are a couple of hours here.

Mr. MacQuarrie: Let us give him a couple of hours extending into this afternoon's sitting and then have the rest of that--

The Vice-Chairman: Is the committee in agreement?

Mr. Gillies: I am quite in agreement with that, Mr. Chairman. I just wonder, when you are considering Mr. Breithaupt's comments on rearranging the schedule, which I think are very good, could we consider whether we might not want to talk to some of the officials?

The Vice-Chairman: Yes, in fact, I should mention to committee in the light of some comments and discussion I have had with the deputy, and the point you raised, Mr. Gillies, with respect to the bank situation--if that is the point. Was that the point you were getting at?

Mr. Gillies: The only point I am making is that committee may not want to hear from these people. I am just suggesting that we have not specifically invited anybody to come before a committee meeting. If we were going to do so, I would suggest that one group we would want to hear from is some of the people who are wrestling with this problem in other jurisdictions.

The Vice-Chairman: Okay, without getting into motions at this time, it appears to be agreed by the committee. Let us proceed with Mr. Crosbie.

Mr. Crosbie, you will proceed uninterrupted. At that point, we will proceed with the questioning.

Mr. Crosbie: I would refer members then to pages 8 to 12 of the white paper. I will be following in order the recommendations and conclusions set out there.

First, in the future there should be a more active approach to regulating loan and trust corporations in Ontario in order to anticipate problems. Changes throughout the white paper are aimed at giving the registrar in his central administrative function sufficient capacity to control the activities of loan and trust corporations in Ontario.

The multifaceted aspects of control include investigative functions, a preventive early warning system, a selective response of enforcement, reporting and examination. These well-defined controls will extend to all such corporations operating in Ontario whether incorporated in Ontario or not. The new regulatory direction of the ministry would be aimed at corrective, progressive measures to ensure, whenever possible, that corporations are living up to legislative requirements and public expectations and to prevent the necessity of more extreme action.

To bolster administrative functions of the ministry and to ensure responsiveness to industry needs and public concerns, a new office of commissioner of financial institutions and a financial advisory committee would be created. As well, internal organizational changes would be made.

The comments in this section specifically mention the new commissioner, the financial advisory committee, the new assistant deputy minister and the separation of inspection from investigation. These are all dealt with separately in the immediately following paragraphs. I will move directly to them.

Mr. Cassidy: Excuse me, are there copies of this statement that we can follow as you go through it?

Mr. Crosbie: I made changes as late as this morning on this, trying to reflect some of the requests that were made about the 1975 report. I do not have a clean copy that I could give you.

Mr. Cassidy: Having agreed that we will listen uninterrupted makes it darned difficult. One has to scribble crazily in order to make the notes. I do not know whether something can be done about that, but I put that in your hands.

Mr. Breithaupt: It would be very helpful if even copies that were not entirely followed by the deputy were available so that we might be able to highlight something for a question later. It would make it a lot easier for the members, even though the deputy minister may add an additional line here and there or not have it exactly as we would have it in front of us.

The Acting Chairman (Mr. MacQuarrie): I might point out, Mr. Cassidy, in looking over the copy which the deputy minister is following, he has interlined and added quite a bit of material to it. It is doubtful whether an original draft would be of much assistance.

I wonder if we could not proceed and arrange to have copies made available to the members of the committee immediately after the lunch break.

Mr. Cassidy: I suppose I am a bit impatient about this, but the members are being asked to do a great deal of work in terms of understanding this area. Perhaps the deputy can proceed for 20 minutes and the latter part can be copied while he is doing it.

The Acting Chairman: I think it is the pleasure of the committee that the deputy minister proceed, Mr. Cassidy, and I so rule.

Mr. Cassidy: With respect, the procedure is rapidly turning into a farce.

The Acting Chairman: It is no farce. I am trying to get information in a relevant way made available to the members of the committee. If it is not available at this time, I think in order to proceed in a reasonable fashion to deal with the matter, we have to let the deputy continue as agreed.

Mr. Cassidy: I am sorry. I am a little bit upset.

Mr. Crosbie: Mr. Chairman, I am just quickly going through the material here--

Mr. Cassidy: It will be acceptable if we have to copy it, and then we would have copies of that so that we could reasonably follow that on copy while the deputy is using his copy in the first half and after he has finished reading it.

Mr. Crosbie: This comes in parts, as the white paper does. I was just looking at the changes in the second and third parts. We could have those copied now if I could finish on the first part--

Mr. Cassidy: That is fine.

Mr. Crosbie: --and then we could continue on.

The Acting Chairman: Is that agreeable then, Mr. Cassidy?

Mr. Cassidy: Yes.

The Acting Chairman: All right. An other course of action had been agreeable to the other members of the committee. Proceed, Mr. Crosbie, please.

Mr. Crosbie: Continuing to the second paragraph on administration, (a) It is proposed that a new position of commissioner of financial institutions be created reporting directly to the minister to be filled by a senior person from the professional community with the primary responsibility to provide general and specific policy advice to the minister on matters affecting provincially regulated financial institutions, including loan and trust corporations, insurance companies and credit unions; (b) to act as a watchdog for the public interest by maintaining close contact with public concerns, and having the power to hold hearings and review issues affecting the loan and trust industry; and (c) to hear appeals from decisions of the registrar.

Commenting on that, the position of the commissioner would be created to report directly to the minister, and it would be filled by a respected individual from the financial or business

community. He would have an important advisory and investigative role, not just in relation to loan and trust corporations, but to other financial institutions as well.

This is a significant point. Issues will be raised in connection with the discussion of the white paper that deal not only with the trust or loan corporations, but also with other financial institutions. These issues can be referred to the commissioner for his or her investigation and response. In this way, important related issues will continue to be brought to the attention of government. As a watchdog on the ministry's administrative processes, effectiveness will be constantly encouraged.

2. The commissioner would hear appeals from the decisions of the registrar. With his or her expertise and knowledge of the industry, the commissioner would ensure decisions consistent with current prudent business practices.

11:20 a.m.

With the technical knowledge of the industry that neither courts nor cabinet could have, the avenue of appeal to the commissioner would enhance the business credibility of administrative decisions affecting the industry.

Acting with all the necessary powers of a commissioner under the Public Inquiries Act, the commissioner would be authorized to hold inquiries and close contact could be maintained with the public. The commissioner would chair the financial advisory committee discussed in the next recommendation.

3. An independent financial advisory committee is also proposed consisting of experienced persons in the financial and business community which would serve as an adviser to the commissioner with the capability of assisting in the appellate functions.

Commenting on that, the development and regulation of financial institutions is a complex and quickly changing area. No one person can be expected to know every aspect of financial institutions in Ontario. The commissioner and the minister would be aided by the opinions of others well versed in their respective areas. On difficult issues, divergent views can be aired and fully explored. The commissioner can have the benefit of expert advice in hearing appeals from the registrar.

The commissioner's independence from civil servants will be aided by the financial advisory committee. The committee, appointed by order in council, would also show the work related to public inquiries or appeals.

4. The present position of executive director of financial institutions should be replaced by an assistant deputy minister with responsibility for the administration of all branches within the ministry regulating financial institutions in Ontario.

Commenting on that, the internal review has thoroughly explored many division administrative issues. The division has responsibility for loan and trust corporations, insurance companies, cemeteries, credit unions and co-operatives, and the uninsured motor accident claims fund.

A response to the heavy work and increasing demands and responsibility of the division is well advanced. Priority has been given to developing the white paper and legislation that would stem from it. However, the ministry's attention is also focussed on the need to create stronger administrative structures that will accommodate the changes that will result from the white paper policy debate. The assistant deputy minister will provide additional administrative strength and will work closely with the financial commissioner on policy matters. As was announced on Tuesday, this position has been filled by Mr. George McIntyre. The registrar would be free to concentrate on day-to-day regulation of the loan and trust industry.

5. The registrar of loan and trust corporations should be given much broader and more far-reaching regulatory powers.

Comment: The registrar has a specialized function. The white paper proposals would both clarify and strengthen these functions. The gentleman's agreement atmosphere does not reflect current reality. However, the regulatory mode of approach that is called for, in turn, calls for well-defined, comprehensive powers of administrative control. Legislation governs the ambit of behaviour in the classes of corporations and the types of situation to which general rules apply. In individual situations, however, the registrar must have the power to react after examination and hearings to tailor solutions to suit individual circumstances. Without this ability, the ministry will not have the flexibility and authority to act promptly and in a preventive manner.

Regulatory powers, of course, should be outlined in legislation and regulations. In the interest of fairness, they should be subject to appropriate hearing mechanisms and appeal procedures.

6. The position of assistant deputy minister should be separated from the positions of registrar of loan and trust corporations and superintendent of insurance.

Comment: Both the registrar of loan and trust corporations and the superintendent of insurance have unique functions defined in statute and refined by practice over the years. It is appropriate to separate these heavy responsibilities and ensure their separation from the assistant deputy minister position. As mentioned previously, an internal review in this area has been completed and the plans for reorganization of the division are well advanced.

7. A separate investigative unit reporting directly to the assistant deputy minister should be established with special capability to investigate irregularities and problems in all financial institutions regulated within the ministry.

Comment: With the greater emphasis on the regulatory mode, it is essential to determine what is happening where problems are evident. The division already has investigative resources and they are being strengthened. Separation of an investigative unit reporting directly to the assistant deputy minister helps to ensure the independence of the investigative unit and focuses undivided attention on the investigative activities. This problem-oriented function would differ from the more routine examination of companies that are carried out by the inspection staff.

The first paragraph in part II is on carrying on business in Ontario. All loan and trust corporations carrying on business in Ontario wherever incorporated should be subject to essentially the same rules, standards and criteria.

Comment: It is worth reiterating that it is a privilege, not a right, to carry on the business of a loan and trust corporation in Ontario. This is a special kind of business with a special relationship with the public. This is why regulation and supervision is the thrust of the white paper. The aim of public protection would be frustrated if only Ontario corporations were the subject of the Loan and Trust Corporations Act. All companies operating in Ontario must meet the high standards and financial criteria required by the Ontario government of its own incorporated companies. Thus, in the white paper, standards for incorporation of Ontario corporations must mesh completely with standards for registration of extraprovincial corporations. This proposal is entirely consistent, I believe, with the 1975 select committee's comments or recommendations.

2. The granting of letters patent incorporating a loan or trust corporation should remain discretionary but the criteria to be satisfied by applicants for incorporation should be stricter and more clearly defined.

Comment: The issuance of letters patent following approval of the Lieutenant Governor in Council is an old-fashioned method of corporate creation. It is a tradition worth retaining to ensure that those entering the loan and trust corporation field are appropriately able to deliver to the public the specialized services their companies will be providing. The maintenance of a discretionary system was also recommended by the 1975 select committee. However, a totally discretionary system is open to abuse or, just as bad, the appearance of abuse.

This is where the white paper goes further than the select committee in setting up criteria. The white paper says it would be necessary to specify in the act what is expected from applicants wishing incorporation in Ontario and to specify what is expected from applicants wishing to acquire additional powers over time. Existing tests will be expanded so that only those of personal integrity engage in loan and trust business in Ontario. The criteria will be made public.

11:30 a.m.

May I pause for a moment and get my original copy back? I could send out part IV as I continue on part II.

11:30 a.m.

3. Recommendation: Corporations starting a business in Ontario should begin with the minimum powers of a loan corporation and should be entitled to apply for additional powers as they demonstrate their commitment and capability to fulfil them. The estate, trust and agency powers of a full service trust company should only be granted to those corporations with demonstrated capability in those areas and the necessary financial resources and other qualifications.

Commentary: Looking at the track record is an important practical way to determine if a corporation should be permitted to assume new responsibilities. The white paper proposal would be progressive. As companies showed responsibility and as additional capital was available, greater powers could be granted. Movement up the scale would be subject to the approval of the Lieutenant Governor in Council. This type of system would generally be consistent with the 1975 select committee recommendations, although that committee envisioned a more rapid rise to the full service trust company. This is probably reflective of the more stable economic climate in 1975. Experience has shown the need for slower, steady growth. The white paper stresses that corporations should not automatically get powers, as suggested by the select committee, but should earn them through showing fitness in applying for supplementary letters patent.

4. The minimum capital for the incorporation of a loan corporation should be increased to \$2 million and the minimum capital for a full service trust company should be \$10 million. Existing corporations which do not meet the financial criteria would be given time to do so.

Commentary: \$1 million is a lot of money, but, in the view expressed in the white paper, it is not enough to incorporate a loan corporation. Minimum capital requirements for the levels of loan or trust corporations must be established between the minimum of \$2 million and the \$10 million required of the mature full service corporation. Inflation has passed by the \$1 million limit set in the existing act and the recommended limits of the 1975 select committee.

The recommendations at that time were \$1 million for loan corporations and \$1.5 million for trust corporations.

Minimum capital is important because it sets the basis for borrowing leverage. It is suggested it be set at between 10 and 25 times capital. There are well-managed corporations that will not meet the capital requirements as outlined in the white paper. These corporations should be given every opportunity to reach the necessary capital level or adjust their activities accordingly. Time is needed to achieve the integration of existing corporations into a new scheme. As well, the registrar should be able to recommend approval of lesser minimum capital in special circumstances.

5. The powers and functions of every loan or trust corporation carrying on business in Ontario should be reviewed annually.

Commentary: There is no point in having high standards at the time of incorporation or registration and allowing these to lapse. Annual review will be a check against the original criteria. If not satisfied on annual review, the registrar would be empowered to take corrective action. This proposal is consistent with those of the 1975 select committee.

6. Persons proposing to acquire or merge with an existing loan or trust corporation in Ontario should satisfy the same standards and requirements as those who incorporate a new corporation.

Commentary: Treatment of persons engaged in business in Ontario should not be based on the accident of corporate birth. Persons acquiring corporations created through amalgamation or purchase should meet the same financial and fitness standards required of an initial incorporator.

Similarly, acquisitions and mergers should be subject to a public convenience and necessity test. Issues considered would include effects on competition or service to the public. The system to control inappropriate mergers would dovetail with the 1982 amendments requiring the registrar's approval for transfers of shares constituting more than 10 per cent of the shares of a corporation. Working out what should be considered in this approval process would be a task of the commissioner of financial institutions.

7. The registrar should be given the power to require subsidiaries of loan and trust corporations to cease unacceptable business or financial practices.

Commentary: Corporate forms should not frustrate the proper regulatory activities of the registrar. There are good business reasons to have subsidiaries of trust corporations, but one of them is not to hide otherwise unacceptable activity from the registrar. The white paper would provide that the registrar have the power to require cessation of unacceptable or unauthorized activities in a subsidiary. In cases where the act has been contravened in an important and major way there would also be provisions for a forced divestiture of a subsidiary.

Because of the serious financial consequences of such an action, there would be appeals to the commissioner of financial institutions. The value of the subsidiary as an investment would also be brought under supervision of the registrar as would the manner that the subsidiary is accounted for in the capital base for borrowing purposes. In short, the registrar should be able to deal with a subsidiary as if it were the parent trust corporation, defining or limiting activity appropriate for that parent company.

8. The maximum investment by a loan or trust corporation in another corporation other than a subsidiary should be reduced from

20 per cent to 10 per cent, making it less likely that a number of corporations acting secretly in concert could avoid the provisions of the act. Under the present act, trust companies may invest up to 20 per cent in ancillary business corporations other than subsidiaries. The one exception has been real estate corporations where between 20 and 50 per cent of the stock may be held.

A balanced investment portfolio is desirable to spread risk. Too great an investment in one company is potentially dangerous, especially as a trust company would always be in a vulnerable minority position. The maximum to be invested in a real estate corporation should be 10 per cent, as would be the case with all other ancillary business corporations.

9. The registrar would have the power to designate corporations in which a loan or trust corporation has invested as an affiliate with special rules applicable to all transactions with such affiliates.

Commentary: The Morrison report has dealt extensively with the difficult problem of affiliates. As in the case with subsidiaries, it is important that public protection not be dependent on the corporate form. Acting in concert, groups of corporations may be able to circumvent provisions of the act or regulations or orders of the registrar. The act should be structured to avoid this, and the white paper introduces a scheme to do this.

The maximum investment in a corporation other than a subsidiary would be reduced to 10 per cent of the shares of each class of shares the corporation has. At present such investment can be up to 20 per cent. Once such an investment is made, even at less than 10 per cent, the registrar would have the power to designate the corporation as an affiliate.

11:40 a.m.

The effect of this would be to curtail transactions between the trust corporation and its affiliate by requiring prior notice to the registrar of every transaction and by insisting each transaction be for cash and at market value. In transactions involving goods and services, cash would be required, bringing potentially dubious transactions under scrutiny and certainly inhibiting unscrupulous activities.

As in the case of subsidiaries and for similar reasons, the registrar should be able to value the affiliate for inclusion in the capital base and to control the percentage in dollar investments in affiliates.

10. The power of the registrar to regulate and control transactions between a loan and trust corporation and its holding company should be increased and more closely controlled.

Commentary: The holding corporation is another corporate entity which cannot be allowed to obstruct the proper regulation of a loan or trust corporation. Subsidiaries are wholly owned

children of a loan or trust corporation. Holding corporations are the parents. Just as children should not exploit parents, parents should not exploit children. It is for this reason that it is proposed that no transaction involving goods or services, such as commissions or fees between a parent holding company and the loan or trust corporation, be permitted except for cash or unless agreed to in advance by the registrar. If there are any misrepresentations to the registrar, these latter transactions could be reversed.

There are, of course, many permissible transactions between a holding corporation and its loan or trust corporations. The registrar could from time to time issue directives about these desirable types of transactions, such as common pensions, insurance or benefit packages.

11. New restrictions should be introduced affecting the issuance of shares of a loan or trust corporation for other than cash and the consideration that may be received for such shares.

Commentary: The proposed general rule for holding corporation transactions is that they should occur only for cash with full disclosure, following the registrar's approval. Issuance of shares is a special circumstance warranting a new rule, the Morrison report points out. Only under extraordinary circumstances should shares be issued except for cash. If the registrar's approval has been given, the share consideration may be independently appraised physical assets. Those assets should reflect only fair market value. This is an area where the white paper parts company with the select committee, which recommended that shares could be issued for considerations other than cash, such as authorized investments.

12. The registrar should have authority to require specific transactions to be submitted to the board of directors of a loan or trust corporation, or to require the loan or trust corporation to make the transaction public.

Commentary: In some circumstances, were it known that certain transactions were to be made public or be subject to board of directors approval, there would be greater prudence in evaluating the desirability of such transactions. As well, there may be public interest in knowing of certain transactions. Therefore, where transactions are made with major shareholders of loan or trust corporations, these transactions should be, at the instance of the registrar, made public or subject to board of director approval. An appeal to the commissioner could be taken in these cases.

13. All loan and trust corporations carrying out business in Ontario would register initially and renew their registration annually. No registration should be granted or renewed unless the corporation is a member in good standing of the Canada Deposit Insurance Corp.

Commentary: Registration would mark the entry of a corporation into the loan or trust business and will control the

activities subsequent to entry. Modifications to registry would increase or curtail activities. Once in, corporations will have to continue to earn the registration initially given. To this end, there would be an annual registration process involving assessment of the past performance and present condition of the licensed corporation. The act would spell out the mandatory participation in the Canada Deposit Insurance Corp. Being a member in good standing would be a prerequisite to registration or reregistration. This is a principle endorsed by the 1975 report. "Endorsed" is probably an inappropriate word; I should say it was first recommended by the 1975 report.

Although annual assessment for registration is mandatory, wherever special circumstances warrant, a corporation's registry could be looked at to determine if greater control or more rigid restrictions are needed. The special circumstances could be mergers, change in management or control of capital contribution. The registration system would provide the flexibility essential to act quickly and in a remedial manner. The cornerstone of the system would be an excellent information flow between the registered corporations and the registrar.

14. Borrowing and investment power should be controlled by the registrar at the time of registration and annual renewal, with increased borrowing capability and investment powers being dependent upon demonstrated capability and resources.

Commentary: Registration, to be effective, must concentrate on the correlation of competency with the function of the loan or trust corporation. This means that corporations must at registration or reregistration demonstrate the management expertise and capital base to fulfil certain functions. Where a corporation demonstrates ability to manage and has resources sufficient for public protection, wider powers, greater flexibility in investments and greater borrowing multiples would be permitted. Where the contrary is revealed, there would be correlative diminution of the powers shown on the corporation's registry to the point where registration would be denied.

The standards to be set will not be internal or secret; they are too central to the registration process. The relationship between competence, fitness and business powers and functions will be clear in the act and regulations.

Mr. Renwick: Mr. Chairman, there may be people in the audience who are on a watching brief with the committee, and it must be extremely difficult for them if they do not have a copy of the information that is being read to us. If there is anyone who wants to have a copy of it, I think the committee should be prepared to let him have it.

The Vice-Chairman: It is being looked after, Mr. Renwick.

While that is being done, I might mention with respect to the question raised about adjusting the time of hearings, particularly in the last week, that there is some difficulty, at least with one of the delegations, but we are trying to adjust the schedule to have the flexibility suggested by Mr. Breithaupt.

Please continue, Mr. Crosbie.

Mr. Crosbie: 15. Loan and trust corporations incorporated outside the province but carrying on business within the province should be closely regulated in the same manner as Ontario loan and trust corporations. The registrar should have the power to impose limitations on their registry and the power to control their activities according to rules based on competence, responsibility and fitness.

Commentary: Registration is the mechanism for ensuring that extraprovincial corporations are on the same footing as Ontario corporations. As 86 per cent of the assets and deposits of loan or trust corporations operating in Ontario were held by extraprovincial corporations, this makes registration the heart of the regulation of the loan and trust industry. This is especially important where the home jurisdiction of the corporation does not legislate Ontario's high standards.

11:50 a.m.

All the rules that apply to Ontario corporations, therefore, would apply to extraprovincial corporations. Since Ontario cannot use its letters patent system for extraprovincial corporations, the registration system represents the first meeting point between outside corporations wishing to do business in Ontario and Ontario expectations and requirements for those permitted to do business in Ontario.

11:50 a.m.

It should be noted that many jurisdictions require the standards Ontario does. Therefore, the burden of meeting Ontario's registration requirements will not be onerous in every case. A similar recommendation is made in the 1975 report.

16. The registrar should have the power to require corporations to take remedial action where required, including the power to require increases in capital, cessation of investments and reduction in borrowing capacity.

Commentary: Registration is not just a list of what is going on with a particular corporation. It can be an aggressive enforcement tool as recommended in the Morrison report. Where circumstances warrant, the registrar should have the power necessary to modify the terms of registration or even cancel registration. Examples of modified terms could include requiring increases in the capital base, prohibition of certain types of investments, limits on certain transactions with the public.

On a happier note, the registrar could also take positive action to remove restrictions or increase powers. These important decisions affecting the life of corporations would be subject to appeal to the commissioner of financial institutions.

That is the end of part II.

1. Part III, limitations on ownership: The present provisions of the act introduced in 1982 requiring the consent of the registrar for the transfer of shares of Ontario loan and trust corporations and their holding corporations, where the acquirer owns or controls 10 per cent or more of any class of shares, should be extended to apply to all loan and trust corporations carrying on business in Ontario. The registrar should be given the power to cancel or modify the registration to do business in the event any transfer is made affecting such a corporation contrary to the provisions of the act, or where the registrar is denied information from any such corporation respecting beneficial ownership.

Commentary: In 1982 the present Loan and Trust Corporations Act was amended to introduce the requirement of registrar consent for the transfer of 10 per cent or more shares of Ontario loan or trust corporations or their holding companies. Consistent with the philosophy that all corporations operating in Ontario should be treated equally, the white paper proposes that the restrictions on share transfers be extended to extraprovincial corporations. The transfer restrictions on large blocks of loan or trust corporation shares rectifies the previous anomaly that although those incorporating new corporations had to meet standards of competence and integrity, there was no control over those acquiring substantial interests in loan or trust corporations once established.

2. The criteria for the registrar giving or withholding his consent to transfer shares should be based on those criteria applicable to the incorporation of a loan or trust corporation in Ontario.

Commentary. Because restrictions on share transfers correct the anomaly that incorporation was hard to get but acquisition of shares was uncontrolled, it is appropriate that potential transfers be judged on the same basis as potential incorporations. The registrar would examine personal fitness, public convenience, competition and so on. The final criteria, in all probability, will be worked out by the commissioner of financial institutions.

It should be noted that once a potential purchaser has been approved, subsequent transfers would be given automatic approval unless the registrar gives notice of objection. This would prevent undue delay and duplication of effort in the examination of certain kinds of transfers.

3. An appeal to the Lieutenant Governor in Council from the registrar's decision should continue, but an intermediate appeal to the commissioner of financial institutions would be introduced.

Commentary: Because transfers of shares are important to corporations and to certain individuals, it is not appropriate to stop at an administrative decision. Letters patent at incorporation are issued following approval by the Lieutenant Governor in Council. It follows logically then, if the philosophy of applying incorporation standards applies, that there be an opportunity to take disputes about transfers to the Lieutenant Governor in Council for final decision.

A new intermediary step would be introduced to permit an appeal to the commissioner. There business reasons and technical information would be fully explored and debated. Important decisions are reasonably subject to a second opinion, and this would be provided for.

4. No absolute limitation on the ownership of the shares of a loan or trust corporation operating in Ontario is proposed at present, although such a limitation was certainly examined and some discretion in this respect may be desirable.

Commentary: The Morrison report found that majority shareholders had used their position to their own benefit. How can such abuses resulting from a conflict of interest be prevented? In examining this situation, remember that we are talking about owners resident in Canada. An absolute limitation on the ownership of shares in Ontario loan and trust corporations for nonresidents is already in the act. This limitation of 25 per cent for all nonresidents and a 10 per cent cap on any one nonresident individual or group was introduced in 1970. Bank legislation is similar and, like all legislation, is aimed at the continued dominant role of Canadians in the Canadian financial institution system. So when the question of degree of ownership is discussed, it is a question of ownership by Canadian residents.

In theory, there are two reasons to consider restrictions on share ownership by one individual or group: prevention of financial concentration and prevention of conflict of interest. There appears to be no evidence of undue financial dominance in the Ontario loan or trust industry, especially as they have faced increasingly vigorous competition from Canada's major banks.

Mandatory ownership changes could involve requiring capital of \$2 billion to \$3 billion. This would do nothing to foster stability in the industry and could weaken the underlying capital bases of the 12 major corporations likely to be involved. It is difficult to see how this would be in the public interest.

It should be recalled, of course, that there will already be in place a system of prior registrar approval for share transfers of 10 per cent or more. The incorporation-type standards to be met will constitute a screen to keep out owners who have demonstrated that ownership has proved too great a temptation to put personal interest ahead of the fiduciary responsibilities of a shareholder in a loan or trust corporation. As well, in certain cases the registrar could have the power to order the disposal of shareholdings, subject to appeal to the courts. This major weapon would not be used lightly or without recourse to our court system.

5. The possibility of a major shareholder putting personal interests ahead of fiduciary responsibilities can probably be more effectively dealt with by specific conflict of interest amendments than by an absolute limitation of ownership.

Commentary: The question of undue capital concentration having been dealt with, the question of conflict of interest remains. The reality is that someone controls the management of any loan or trust corporation. This may be the majority shareholders, the paid management or even some person hiding his or her ownership interest. Given this reality, conflict of interest situations will arise, and for some individuals--fortunately only a few--the temptation to put personal interest before corporate considerations will be irresistible. Limitation on ownership cannot, in itself, prevent undesirable situations from arising; neither can it eliminate unscrupulous persons from the business world.

6. The emphasis on greater monitoring of the decision-making process by boards of directors, auditors, management and others, which involves more self-policing would seem to be a better way of preventing conflict of interest abuses.

Commentary: Shareholders and owners of trusts and loan corporations do not function in a vacuum. The white paper structure proposes that the natural watchdogs of shareholder activity be strengthened. These monitors include directors, auditors and senior officers. Vigilance and responsibility of these groups act as a check to any inappropriate behaviour by shareholders.

It was pointed out earlier that there were times when the registrar could require board of director approval on a shareholder corporation transaction. This is just one example where corporate responsibility to prevent abuse will be brought home to the relevant persons. Directors, auditors and senior management have the duty to watch decision-making processes to preserve the corporation and protect the public it serves.

It is not a tired cliché to say that our system must continue to rely in part on the personal integrity and high principles of those doing business in Ontario's loan and trust corporations. Those in the industry will also be well aware of the registrar's ultimate power to cancel registration of a corporation and put it out of business.

That is the end of part III.

If I could just take a moment, Mr. Chairman, I was not sure how fast these documents would go. If it meets with the committee's approval, I would like to continue with part IV. Part V is bit of a dog's breakfast in the scrawls I have on it and I would like to get it retyped, which I would do at the noon hour. I can have parts VI to VIII copied at this time, so we could continue with those.

The Vice-Chairman: Fine.

Mr. Cassidy: May I just say that it is an awful lot easier to follow the discussion and to make notes with this material here.

The Vice-Chairman: Perhaps you would do that. Mr. Crosbie, please proceed with part IV.

Mr. Crosbie: Thank you. Perhaps I could then do part VI right away, rather than the whole package.

1. Part IV, conflict of interest: To prevent the reoccurrence of recently discovered abuses, a multifaceted approach is proposed involving not only a more active and stringent regulatory process, but also increased self-policing, sounder and more prudent business practices and an increased awareness of their respective responsibilities by directors, managers, lawyers, auditors, valuers and other advisers.

Commentary: No single approach can limit or control conflict of interest problems. These problems are too complex and can arise in too many circumstances to be readily dealt with by one simple answer. There must be several thrusts: self-policing; good business practices; and the recognition of duties of key players such as directors, managers, lawyers, auditors and valuers. Changes needed are organizational for corporations and personal for involved professionals. Obligations to the client loan or trust corporation are not definable solely by shareholders or managers giving professional instruction or direction.

Internal control and responsibility are the first line of defence against problems. Government regulations must mesh with this. In general the white paper is consistent with select committee recommendations on conflict of interest, but I believe it explores the issue more deeply.

2. Internal review procedures of registered corporations should be strengthened and tightened.

Commentary: Each registered corporation should have appropriate internal procedures for approving transactions based on some sensible relationship between the significance of transactions and the level of approval required. Such written procedures for approval and review of approval should be acceptable to the registrar.

As discussed earlier, any transaction not prohibited that benefits shareholders or some other corporate insider should be subject to board of director approval. Total disclosure would be required in such cases. Well-defined internal corporate procedures bring potential conflicts of interest out into the open where risks can be evaluated. These procedures will represent significant preventive measures.

3. External advisers should be made legally accountable. Corporate life is complex; modern life is complex. We all must rely on experts; so do corporations. External expert advisers, such as lawyers, auditors and valuers, should be governed by the act if they knowingly participate in a breach of conflict of interest provisions. The Morrison report stressed the importance of accountants and lawyers in such situations.

4. Professional associations should be expected to redefine codes of conduct and ethics.

Commentary: The government will call on the responsible professional bodies to advise on appropriate codes of ethics and conduct to govern members of the various professions as they encounter conflict of interest situations.

5. Auditors should be given rights to call and attend audit committee meetings.

Commentary: In a financial corporation such as a loan or trust corporation auditors play a significant role. They cannot play that role if their access to information and to senior levels of the corporation is limited in any way. As a result, it should be clear that the auditor should have the right to attend all meetings of the audit committee of the board of directors. He or she should be able to originate such meetings.

6. Auditors should be expected to advise the board of directors and the registrar of breaches of conflict of interest rules that come to their attention. If after giving advice the auditor finds that appropriate action is not taken, there should be an obligation to report breaches of conflict of interest provisions to the registrar. Pertinent information should be provided, such as the extent of benefits to shareholders or insiders of the corporation.

12:10 p.m.

Having been given this major responsibility, auditors who act in good faith should be protected from personal liability.

7. Registered mortgage brokers and their officers should be ineligible to serve as directors of loan and trust corporations.

Commentary: In some cases absolute prohibition is the best way to prevent conflict of interest. This is the case with the mortgage broker business. Registered brokers and their officers should be ineligible to serve as directors of loan and trust corporations. This eliminates the possibility of certain conflicts arising in the central area of mortgage investments for loan and trust corporations.

8. Corporations should be prohibited from purchasing or acquiring goods or management services or paying finders' fees to any affiliated corporation or holding corporation except with the prior approval of the registrar.

Commentary: Relations with affiliates or parent companies must be constantly reviewed to determine if the conflict-of-interest situation is leading to improper or imprudent activity or to inappropriate benefits to related corporations. As a result, consistent with earlier provisions for dealing with related corporations, there should be a prohibition against commercial arrangements between affiliated or parent companies and loan or trust corporations without prior approval of the registrar.

Equally, commercial transactions or asset sales with those to whom loans would be prohibited or restricted, such as shareholders, should be prohibited or permitted only with the registrar's consent. Commercial transactions would include acquisition of management service or payment of finders' fees.

9. A reviewable and voidable transaction concept should be introduced so that improvident transactions between corporations and insiders or affiliates can be set aside and money or assets recovered.

Commentary: The act prohibits certain transactions and will provide regulatory remedies where provisions of the act are breached. There will also be offence and penalty sections in the act. However, it is not always possible to determine immediately whether a particular transaction is improper and should therefore be void.

The proposal allows for a review of the transaction and in situations where an affiliate or holding company or an insider has received undue and inappropriate benefit from a transaction, a civil remedy should be available. If the transaction is found to be improvident or to involve an adequate consideration, the action could be set aside and rendered void. The loan or trust corporation would then recover the money or asset in question. A shareholder could also initiate such an action on a derivative basis.

10. The registrar should be given wide authority to require changes in the internal approval processes and procedures of regulated corporations.

Commentary: Appropriate internal procedures are the first line of defence against possible conflict-of-interest problems. Reviewing these written procedures may lead the registrar to question the capacity of existing procedures to perform that job. Where appropriate, the registrar should be able to require modifications to such internal corporation procedures and to require adherence to the revised procedures.

For certain types of transactions, notably with shareholders or insiders, the registrar should be authorized to require special approval procedures. Examples would include approval by a committee of the board of directors or by the whole board or by the registrar. So that the registrar is confident that direction in this regard is followed, copies of the minutes of the board of directors and committee minutes would always be filed with the registrar.

The Vice-Chairman: Mr. Crosbie, if I may interject, we will give the clerk a moment to get that section distributed.

Mr. Crosbie: I will move to part VI, management and organization.

1. Corporations should notify the registrar following the election, removal or resignation of any director, and prior notification of and approval from the registrar would be required

before the appointment of the chief executive officer or chief financial officer of every registered loan and trust corporation.

Commentary: The key personalities of a corporation make a difference. Incorporation is granted only to individuals judged fit in personal and professional terms. Registration is granted only where the registrar is satisfied that senior management is able and honest.

Information about turnover among directors and officers is crucial. The registrar must be informed promptly of the qualifications, election, removal or resignation of directors. The chief executive officer of a corporation and the chief financial officer are in a special position. Their impact on a corporation is so great that prior notification and approval should be sought from the registrar before such appointments are made. Appeal on the registrar's decision could be taken to the commissioner.

2. An audit committee should be mandatory for all loan and trust corporations consisting of a majority of outside directors who are not officers or employees of the corporation.

Commentary: All corporations should have an audit committee of the board of directors. The duty of the committee would not be pro forma but real. They would meet at least twice annually, or at the call of the auditor or another director, to review reports and transactions as required in the act or by the registrar. Outside directors would be in the majority on the committee and the auditor would also attend meetings. Minutes of meetings and reports to the audit committee should be available to the registrar.

3. An investment committee consisting of a majority of outside directors of the corporation should be appointed to ensure appropriate standards and levels of authority for all loans and investments made by the corporation.

Commentary: Similar to the audit committee, an investment committee of the board of directors should be required. Again, its functions are significant in ensuring that appropriate standards and approval mechanisms are in place for loans and investments. The standards and level of authority required for approvals should be made clear to the larger board of directors and to senior management. Because of the importance of these determinations and directions, the committee should be made up of a majority of outside directors, those who are not employees or officers of the corporation.

4. The board of directors should be required to review specific financial data regularly to assist early detection of problems.

12:20 p.m.

Commentary: The two committees discussed are important, but ultimately the responsibility for the appropriate systems and procedures rests with the full board of directors. As recommended by the 1975 select committee, the standard of care to be exercised

should be clearly outlined in the act and not be less than that in the Business Corporations Act. Indeed, the Morrison report indicates that courts would be unlikely to accept a lower standard.

The board of directors must be responsible for the definition of levels of authority and responsibility for commitments and decisions of the corporation. On at least a quarterly basis, the board would review reports regarding matching of deposits and investments, defaulted or nonperforming loans, mortgage arrears, delinquent receivables, matching sensitivities showing assets and liabilities, maturities and interest sensitivities.

Where a corporation has been permitted to engage in commercial lending, the board of directors must approve organizational and procedural structures to segregate the two aspects of the corporation's business.

The Vice-Chairman: Thank you, Mr. Crosbie. That would appear to me to be an appropriate spot at which to adjourn to reconvene and, to the extent it is possible, I would ask the committee to please allow us to start on time.

The committee recessed at 12:21 p.m.

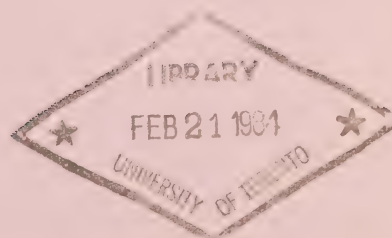
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

THURSDAY, FEBRUARY 9, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
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Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Clerk pro tem: Richardson, A.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Parrish, M. C., Solicitor
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 9, 1984

The committee resumed at 2:14 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Vice-Chairman: I recognize a quorum. The committee will come to order.

Mr. Crosbie: Mr. Chairman, I do not know whether part V has been distributed.

The Vice-Chairman: Yes, the clerk has it right now.

Mr. Crosbie: Just to remind the committee of the order in which I will proceed now, having completed part VI and skipped over part V, I will start with part V and then proceed to part VII.

Part V, business and powers:

1. Corporations should be obliged to make clear to their depositors the extent to which their moneys are insured with the Canada Deposit Insurance Corp.

Interjection.

Mr. Crosbie: Commentary: Under the white paper, both loan and trust corporations would be required to receive and invest funds with the level of prudence and good faith associated with the fiduciary relationship. The white paper requires membership in the CDIC as a condition of registration. Depositors should know to what extent deposited money is insured by CDIC. It is only in this way that risks can be properly assessed by the depositing consumer.

Funds held in excess of insured limits are often called guarantees, that is, guaranteed investment certificates. It generally means that the depositor has priority over shareholders where there is a shortfall. This should also be explained to the depositing public.

2. Funds held in trust should be segregated from a corporation's funds and shown separately in financial reports.

Commentary: Funds held in trust should be held separately from the funds of the corporation and they should be shown clearly and separately from corporate funds in financial reports. I should clarify that--the funds held separately from the corporation should be the capital as opposed to the different types of trust funds and estates, trusts and agencies--as opposed to trust deposits. The recommendation is that the funds should be accounted for separately from the capital of the trust company.

3. A prudent lender's standard should be introduced for mortgage lending and valuation purposes for all real estate lending.

Commentary: Most loan and trust corporations establish and follow prudent practices in lending money on real estate, particularly for mortgages. Because all corporations must invest at least 50 per cent of their money in trustee investments, including first mortgages, the practices involved in real estate lending are often the key to corporate health. The good practices prevalent in the industry now are worthy of enforced emulation. This is why a statutory prudent lender standard will be introduced.

A maximum of 75 per cent should be advanced on real estate in the form of a mortgage. As well, the value of real estate should be subject to rigorous conservative tests, recognizing that when payment is not made on a mortgage the holder may have to realize the security. That sobering reality is intended to permeate practices of real estate valuation in subsequent lending.

The introduction of a definition of real estate value was a recommendation of the Morrison report, as the lack of a statutory definition had been exploited.

4. Third and subsequent mortgages should be limited as investments for all loan and trust corporations.

Commentary: Third mortgages do not represent the best security available, and they are of a different character than first or second mortgages. Being lucrative, they may be required to match deposit rates with investment rates; however, they should be limited within the investment portfolio of loan and trust corporations. Again, the emphasis is on prudent investment practices.

5. The registrar should be entitled to require corporations to establish appraisal standards and define circumstances under which independent appraisals are required for real property.

Commentary: It must be reiterated that real estate investment has been the backbone of loan and trust corporations; therefore, treatment of real estate investment is crucial. The value placed on real estate is usually done by appraisals involving site visits, as well as considerations of market, economic conditions, cost of realization of the security and so on.

Rules for appraisals and appraisal standards should exist in every corporation. These rules should be widely known to corporation staff, as should be the necessary appraisal processes. The registrar should have power to review the rules, standards and processes and to direct changes where appropriate. After seeking the advice of the commissioner and financial advisory committee, the registrar could issue general guidelines and internal control standards so corporations and those dealing with corporations know what to expect. Circumstances where independent appraisal should be sought would be outlined.

6. Loan and trust corporations should not be permitted to

own, directly or indirectly, real property having an aggregate value in excess of 10 per cent of the book value of the corporation's assets.

Commentary: Most of the time, real estate is a good investment, but not always, certainly not in all places at all times. A mixed investment portfolio in real estate spreads the risk inherent in real estate investments. Prevention of undue concentration in one real estate package or project is one way to spread possible risks. Therefore, it is sensible to prohibit loan and trust corporations from owning real property with more than 10 per cent of the assets of the loan or trust corporation.

To ensure the 10 per cent limit is not exceeded, real estate purchased should be subject to competent appraisals and periodic reappraisal should be required. These appraisals would be on a gross basis, not on a net equity basis. This means the total value of the real estate would be considered and the value of the mortgage not deducted.

7. Loan and trust corporations should be entitled to engage in commercial lending up to a maximum of 15 per cent of the assets of the corporation, with specific limits on loans to any one borrower or related group. Corporations engaging in commercial lending should segregate their commercial lending activities from their fiduciary functions.

Commentary: Commercial lending would enhance the financial position of many trust companies, particularly on matching deposit rates with investment returns. On the other hand, commercial lending is a field requiring certain expertise. Not all trust corporations have the capacity to enter this field.

Those who have demonstrated capacity and have the appropriate capital base should be permitted to enter the field to a maximum of 15 per cent of the corporation's book value assets. The registrar would permit entry only when satisfied of the corporation's fitness to enter the field. As well, corporations must separate commercial lending activities from other corporate functions. This would prevent the inappropriate use of information obtained in the course of commercial lending.

That loan or trust corporations engage in activities such as issuing letters of credit or guarantees has never been contemplated. These are banking activities, and the registrar should have the power to absolutely prohibit these and other banking activities.

Commercial lending is short-term, less than a year. It may be a floating charge or in a demand note secured by inventory and receivables. Lending on the security of equipment leases is an area of commercial lending that is growing in popularity and interest.

8. No corporation should be entitled to carry on any estates, trusts and agencies activities in Ontario until it has satisfied the registrar that it has the commitment, organization and the resources to do so on a long-term basis.

Commentary: Administration of estate, trust or agency activities is a specialized function of trust corporations. These activities should be assumed only on consent of the registrar. This is an area where invaluable advice from the commissioner and the financial advisory committee would result in the registrar issuing appropriate guidelines for the information of the industry. Where appropriate, regulation would also be created to govern the conduct of these important fiduciary relationships.

Part VII, financial standards and controls:

1. The registrar should be given authority to control borrowing from the public by determining the assets to be included in the borrowing base and the authorized borrowing multiple. Borrowing multiples should vary with proven experience and resources from a minimum of 10 times the borrowing base to a maximum of 25 times.

Commentary: The borrowing base of a corporation is its capital resource. To receive deposits from the public, a corporation may take in between 10 and 25 times its capital of borrowing base. This is called the borrowing multiple. At present the minimum borrowing multiple for loan corporations is four times and for trust companies 12 1/2 times. For example, if a corporation has a borrowing base of \$10 million, it would be permitted by the registrar to receive between \$100 million and \$225 million in deposits.

Obviously, the calculation of the borrowing base and the determination of the appropriate borrowing multiple are crucial to corporations and to the public. What should be included in the capital base of a corporation for borrowing purposes should be strictly controlled by regulation and uniformly applicable. As well as industry-wide standards, the registrar should have power to exclude or devalue assets and investments in the borrowing base of a particular corporation. This is an area where advice should be sought from the commissioner and decisions of the registrar should be subject to appeal.

Once the borrowing base is established, the borrowing multiple would be determined, varying between the minimum of 10 times borrowing base to a maximum of 25 times borrowing base. The multiple, when set, should be a matter of public record and should be set as part of the registration and annual reregistration process. Changes in a multiple would immediately be brought to the attention of the board of directors.

Multiples would increase with and in conjunction with increases in the capital base and with the demonstrated good record of the registered corporation and its ability to show appropriate financial and human resources. Decreases would result from adverse changes such as change in control, breach of regulations or poor business management. The decision by the registrar to reduce a borrowing multiple would be subject to appeal to the commissioner of financial institutions.

2. The registrar should be entitled to prescribe maximum borrowing costs and commissions payable by a corporation from time to time in the light of the prevailing market conditions.

Commentary: If a trust or loan corporation pays excessive commissions or offers costly terms, it can place itself in a financially risky situation. Subject to appeal to the commissioner, the registrar must have the power to limit such terms or commissions to those that would be reasonable.

Mr. Cassidy: Does "terms" mean rate of interest?

Mr. Crosbie: It would include the whole package, the cost of borrowing.

Mr. Cassidy: So it would include the rates they would offer.

Mr. Crosbie: Yes.

Considerations that would go into the registrar's decision to intervene would be the going rates in the marketplace and factors relevant to the types of transactions and businesses operated.

3. Standards for matching of interest and terms of borrowing and lending should be established, with the registrar given broad authority to require corrective action where mismatching occurs.

Commentary: Earlier the responsibility of the board of directors to supervise matching in a corporation was emphasized. The return on investments and the rates paid on money coming in must be matched or a corporation will quickly find itself in a deficit position.

Financial stability for loan and trust corporations is essential. Therefore, general standards for matching should be prescribed in regulations and supplemented by directives of the registrar, subject to appeal to the commissioner. The registrar should also have authority to request that specific action be taken to remedy mismatching. Such actions could include reduction of borrowing multiples or imposition of limits on certain types of borrowing or investments and limits in quantum for borrowing or lending. Internally corporations would be required to set matching standards, and the board of directors would be expected to review these at least quarterly.

Part VIII, financial records and reports:

1. A major restructuring of the reporting process is proposed for all loan and trust corporations. An experimental reporting system now being tested will be introduced and expanded in 1984 for all loan and trust corporations operating in Ontario. The system would show exceptions and infractions and provide an early warning signal for potential problems. It should be accompanied by audits and investigations specifically directed to problem areas.

2:30 p.m.

Commentary: Prompt, accurate and complete information is the lifeblood of the regulatory process. Throughout discussion of the white paper there have been instances where intervention powers are proposed for the registrar. Without appropriate information, the intervention could be either too late or premature.

Business conditions and interest rates change rapidly and a corporation's financial stability may also be quickly altered. Risks must be constantly monitored; periodic reports are insufficient to meet modern regulatory and business requirements. On a test basis an early warning monthly reporting system has been instituted for detection of possible business problems, statutory infractions or unusual trends and developments. In this way, early detection and rectification are possible.

Any unusual element detected by the registrar would also be made known to the board of directors and auditors so that immediate internal steps can be taken to solve problems. The monitoring system will be coupled with onsite examinations, surprise audits and investigations. These tools will be used primarily with companies that have demonstrated poor internal capacity for resolving problems identified by the registrar.

In the white paper a caveat is entered to the effectiveness of any monitoring or inspection system. It is worth repeating. "We cannot absolutely stop dishonesty or fraud." However, high reporting requirements and vigilant monitoring act as considerable deterrents and provide an opportunity to catch those who have been unwisely undeterred.

2. All loan and trust corporations should standardize their record-keeping and reporting.

Commentary: The reporting and monitoring system is hampered when corporations report different things or when reports are constructed from different information, depending on the corporation. The result is that it is difficult to make appropriate peer comparisons or to collect meaningful statistics.

It is time-consuming and laborious for the registrar's staff to reduce all reports to a uniform denomination. As recommended in the internal review, it would seem a sensible policy to move towards uniformity in reporting essential financial or other data. As well, reports should be more consistent with those of other regulated industries and documentation standards introduced.

This is an area appropriate for input from the commissioner and financial advisory committee. In collaboration with the industry, external auditors and professional bodies such as the Canadian Institute of Chartered Accountants, uniform systems could be developed. These should serve the regulatory need of the registrar but be workable for the loan and trust industry.

Part IX deals with enforcement--

Mr. Renwick: Is this the end?

Mr. Crosbie: Part X is the last.

Mr. Renwick: I do not want you to think I have not found it enthralling.

Mr. Crosbie: You just took my breath away.

1. New safeguards and remedial actions are proposed where the additional self-policing responsibilities are not adequate to protect the public interest, including in particular the following: The investigative capacity of the ministry respecting financial institutions should be substantially strengthened.

A rehabilitation capability should be created for monitoring and enforcing a course of action directed by the registrar with a view to restoring a corporation to full compliance with the act and regulations, all designed to achieve rehabilitation without the registrar taking physical possession.

Where rehabilitation is not possible for any reason and taking possession is necessary, the registrar's authority should be strengthened and his options increased.

Commentary: Enforcement is the culmination of the regulatory process which in turn is aimed at the protection of depositors' and public funds and the maintenance of public confidence in Ontario's financial institutions. Proposals in the white paper emphasize corporate responsibility and internal control but there are times and areas where external corrective action is necessary.

Information necessary to the registrar has been discussed. Information may disclose a need for further investigation and sophisticated investigative resources must exist and be structured to report at a senior level in the ministry. An investigative group would explore potential and identified problems, report findings of fact and the severity of the problems. Finally, corrective or remedial action would be put forward.

The registrar would be given power within the act to follow the remedial plans or corrective actions. The type of discretion in the registrar would be clearly defined. The registrar, in his investigative capacity, would have authority to exchange information with his provincial or federal counterparts or law enforcement agencies without breaching laws of confidentiality. In some instances problems are isolated and solutions quick and straightforward; in other cases there are concerns embracing much of the corporate life of the loan and trust corporation. For these corporations wider plans are necessary and the registrar, without taking possession of the corporation or taking over management, will be in a rehabilitative capacity vis-à-vis the corporation.

The corporation would be assisted to full compliance under the act. Over time, restrictions would be modified and remedial action reduced as the registrar regained confidence in the corporation. Recovery and restoration would be the ultimate aim of the comprehensive course of action proposed by the registrar in multi-problem areas. The co-operative rehabilitation effort may not always be feasible; neither will it always be successful. There are times when the registrar must take control of the loan or trust corporation.

For extraprovincial corporations, the registrar must seek co-operation of other jurisdictions in developing an appropriate control mechanism. However, the registrar should be able to impose undertakings not to sell assets of extraprovincial corporations and to take control of Ontario assets. In serious cases the registrar should be directed by order in council to take possession of an Ontario corporation, conduct its business and control its assets.

Mr. T. P. Reid: I do not think that would ever happen.

Mr. Crosbie: The registrar must then conduct the business and take steps to rehabilitation. The alternative is to wind up the corporation or allow the shareholders to wind up. Deficiencies would arise in this situations.

The registrar should have access to the courts to deal with specific needs in rehabilitation, such as the approval of appointments of substitute trustees. In short, the registrar's flexibility in dealing with the corporation subject to rehabilitation should be broadened. Because not all corporations carrying on business in Ontario are Ontario corporations, a resolution of all problems in the rehabilitation area involves working with the federal government and provincial government with a view to uniform legislation.

If a corporation carries on business in a province and has assets there, the province should be able to take control of these assets regardless of the incorporating jurisdiction of the corporation. Substantial penalties must be available to act as a deterrent for prohibited action. In particular, failure to disclose conflict of interest or beneficial ownership should be subject to fines of up to \$100,000.

1. Part X, hearings and appeals: An expedited hearing and appeals procedure is proposed under which the registrar should be entitled to direct corporations to take or refrain from taking specific action, and the corporation would be bound by that direction during the appeal process so that depositors' money and the public interest would be protected until the potentially lengthy appeal process has run its course.

Commentary: Modern legislative practice appropriately provides avenues for dispute when administrative decisions are not satisfactory to the parties involved. Throughout the white paper we have referred to decisions of the registrar being appealed to the commissioner of financial institutions. In some cases we have discussed avenues of appeal to the Lieutenant Governor in Council and to the courts.

I should note that the 1976 select committee suggested appeals to the Commercial Registration Appeal Tribunal. This does not appear to be appropriate because much specialized skills and knowledge will be needed. The Commercial Registration Appeal Tribunal, which deals with car dealers, real estate brokers and so on, would not have the necessary background.

Many decisions or directions of the registrar will have severe consequences and considerable impact on corporations and individuals. There should be opportunities for the registrar's decisions to be reviewed at a higher level. The act, as proposed in the white paper, would provide for this, and during appeals no enforcement steps would proceed. However, the appeal process should never be a tool of delay for corporations that have placed depositors at serious risk, and immediate action is necessary and the power to take immediate possession and control of assets without a hearing, created by the 1982 legislation, would be retained.

2:40 p.m.

Where the registrar is directed by order in council to take control of a corporation, during the appeal process the registrar must have the power to direct that corporation to hold back on certain actions. This is the only way depositors and the public can be protected pending a final decision. In these cases, a quickly expedited hearing process is proposed. The disposal of court cases, however, is beyond the power of the ministry to control and it is inevitable that delays will occur during such appeals.

2. Appeals on errors of law or fact from decisions of the registrar would be provided to the courts and an additional appeal on matters of significant business import would be available to the commissioner.

Commentary: The usual hearing and appeal procedure would be as follows: A report outlining the issue at hand would be sent by the registrar to the corporation inviting informal discussion. The registrar could then hold a formal hearing where lawyers would appear, issue a directive that certain action be taken unless the corporation initiates a hearing, issue a directive requiring immediate action but setting a later hearing date to discuss modification or withdrawal of the directive.

Where corporations feel the registrar has made an error of law or fact, an appeal lies to the courts, and compliance with the registrar's directives would be required unless the court relieves the corporation of its obligations pending the appeal. Where substantive business issues are in question an appeal to the commissioner is available.

It is important to note that appeals to the commissioner will not modify existing provisions in the act giving the Lieutenant Governor in Council final decision-making power in certain instances.

3. Where the registrar has been obliged to take possession of a loan or trust corporation and rehabilitation is not possible, then the courts would be given a new and significant role in determining the terms and conditions under which the registrar would remain in possession or the assets and undertaking would be sold.

Commentary: When depositors or the public are at serious risk because of a corporation's activities, the registrar would be directed to take control of the assets of a corporation. In some cases, the loan or trust corporation can be rehabilitated and control returned to the corporation.

If this is impossible or if this would injure depositors, the registrar should be permitted to apply to the courts to get appropriate orders. The court could, for example, authorize another person to carry on the business of the corporation, imposing appropriate terms. The assets could be directed to be sold in whole or part. Interim or permanent substitute trustees could be appointed to deal with the fiduciary or trust business of the corporation. The registrar cannot stay in control of a corporation forever, and an orderly plan of disposition, supervised by the courts, is essential.

Mr. Chairman, that is the end of the presentation on the white paper.

Mr. Chairman: Thank you, Mr. Crosbie.

The committee this morning agreed we would complete the presentation uninterrupted, which we have done. If there are questions concerning specific sections of the white paper, this is an appropriate time to try to deal with as many of them as we can within the time remaining.

Mr. Cassidy: I have two or three general questions. I have not gone back over the list of more specific things, but I would also like to elucidate them some time.

First, banks and thrift institutions in the United States have ownership restrictions. These were proposed in the federal proposal, albeit only for large trust companies, and have been rejected. It is like an article of faith. Under no conditions is the government prepared to have them. I would like some elucidation as to why the government has taken that view and taken it so adamantly. It seems the reasons offered are, first, that you are not so concerned about conflict of interest and, second, you are not so concerned about financial concentration. You have not really responded to the situation we have faced, which is essentially the abuse of power involved when one individual or a small group of individuals can gain access to such a lot of economic leverage through the control of a trust company.

In the case of the Pocklingtons, the Rosenbergs and other people like that, it seems to me it just attracts people with an entrepreneurial bent who also, it is clear, have until recently considered that once they had control of a trust company, they found it difficult to distinguish between their resources and the company's resources. This is true, I suggest, even in trust companies that do not have the kind of problems that Seaway, Crown and Greymac had.

My second question relates to this thicket, this jungle of regulatory officialdom that is being created. When you mentioned

the courts at the end, I just made a list. In fact, the commissioner has a role in setting policy; the assistant deputy minister has a role in policy, which is a bit difficult to determine, and also will control both the registrar and the investigative unit, who appear to communicate through the ADM rather than directly; the cabinet and the Lieutenant Governor in Council clearly have some of kind of role; the registrar is one step lower in the pecking order than under the current situation, but he obviously has an important role; then the courts will enter into it if the registrar actually exercises some powers.

I think a lot of the briefs are going to ask, "Why all this administration?" Since my party is well known as being concerned about overregulation about the proliferation of bureaucracy and things like that--

Mr. J. A. Taylor: I think you left out the appeal tribunal.

Mr. Cassidy: The appeal tribunal as well. I beg your pardon. There is the appeal tribunal and the committee of wise men and women from the industry.

So my two questions relate to controlling interest and to the choice of such a proliferation of bureaucracy instead of trying to create something more streamlined and effective.

Mr. Crosbie: I will try to deal with the two questions separately. On the question of control of ownership, I do not think there is any suggestion in the white paper that it is a one-sided issue. As to the arguments you make, that many people make and that the banks make cannot be dismissed casually, I think there is substance to them.

In reviewing the white paper, all I can say is that on balance the conclusion reached was that the 10 per cent rule in the banks was not created for any of the reasons we have talked about; it was created to control foreign ownership. It has subsequently become a virtue, and there is no clear indication that the 10 per cent control limits in banks have made them any wiser in their investment practices. The loss ratio of banks right now is about twice the loss ratio of trust companies in this country and, as we all know, they have got themselves involved in some rather stupendous investments, which, if it were not for the banking mechanism of the country, might have been much more embarrassing than they have been. So I do not see that one can argue that the 10 per cent limit of itself has produced extraordinary results for banks.

With regard to the other issue on the 10 per cent control, we make the observation that somebody controls a company. I think there are very few large corporations that are run in a truly democratic way. In the banks, I dare say, the chief executive officer has an awful lot to say about how that bank runs and what the policies of the bank are, and in a widely held trust company I think the same practice would be true.

2:50 p.m.

Taking all of these issues together, the conclusion was reached that it would be as effective--or more effective, I think we would have to say, because it was the choice made--to go at some sort of system of controls and checks, as has been set out in the white paper. You can reject that, but I am sorry there is nothing more I can add to the argument. I suppose it is a question of opinion.

Mr. Cassidy: Taking again a leaf from the New Democratic Party's book in terms of regulation, I think if there is a 10 per cent rule and even if the trust companies remain an implement of the establishment--which is what they have been--none the less you have a bunch of owners who are watching each other. The likelihood of the prudent-man tests being adhered to are more likely if professional managers--the chief executive officer and the people with the management group--are exercising a lot of control than if buccaneering entrepreneur has control of the institution and issues orders.

We saw what happened in the case of Crown Trust when a buccaneering entrepreneur came in and took over an institution which had otherwise been extremely prudently, maybe too cautiously, managed. None the less, in the contrast the defences crumbled, once a buccaneering entrepreneur came in.

You still seem to be leaving that situation open, or the restriction is an outside restriction. We have tried that already and the registrar was proved unable to stop two or three buccaneering entrepreneurs coming and cutting a very wide swath through the financial industry in this province.

Despite that, you are saying you still want to do it again, rather than ensuring a situation where there is more possibility that the trust company will have internal checks because the ownership is shared, rather than control being in the hands of one individual.

Mr. Crosbie: Certainly, the white paper opts for putting control mechanisms in the organization as one of the techniques. If there were appropriate decision-making processes for approving loans, a single individual in the corporation should not be able to compel a loan to be made contrary to the provisions of the act. If he did and the board of directors went along with it, under our new provisions we would create a very substantial liability.

Mr. Cassidy: I think we are going to have this argument some more, Mr. Chairman.

Let me ask the second question again, which is on the proliferation. To some extent, it almost looks as if it is the standard organizational ploy, which is that you work around a particular office if you cannot change it. Effectively, you seem to be working around the registrar's office with all of this kind of proliferation. You have argued in your comments, somewhere along the way, that the administrative pressures on the registrar

are such that you need all this other high-priced help.

The internal review, however, argued rather to the contrary. It seemed to me they argued that the energies of the registrar and of the staff there were misplaced; they were focused on the wrong things. The administrative systems were not tight; there was no policy committee; they were not communicating adequately.

In other words, you are saying all of these extra officers are needed because of the inefficiencies of the existing operation, rather than beginning by running a decent ship there.

Mr. Crosbie: I would not put that interpretation on it at all. I think we have said, particularly with the extremely heavy activities developed in the financial institutions in the last few years, the role, the responsibilities that were focused in the superintendent of insurance and the registrar became excessive, became more than a single person could capably handle.

That means if you cannot do all of your job to a level that would be desirable and something has gone wrong, presumably it is because you were not putting all your efforts in the area that would have stopped whatever went wrong.

In those circumstances, if you analyse what happened, obviously the activity must have been going on some place else. I do not agree that is necessarily inefficient activity in those areas. It just might not have been the activity that would have stopped the particular event that occurred.

Part of our answer--and a substantial part of the answer, in our opinion--is to increase the administrative capacity of that division. We have done it in a number of ways; one is to split up the responsibilities. In the white paper we propose having an assistant deputy minister who would have the capacity or the opportunity to devote much more of his time to overseeing the operation. We have the registrar and the superintendent of insurance, who would each be able to focus his energy on his particular area.

In addition, we talked about increasing or strengthening the staff serving those groups. I do not think it is just a case of stirring up the same pot and we have the same bowl of fish when we are done. I think a substantial and effective change is being recommended.

Mr. Cassidy: I guess I see the responsibilities of the executive director of financial institutions resembling in large measure the responsibilities proposed for the ADM. The registrar's responsibilities resemble in large measure the responsibilities currently with the chief examiners.

Mr. Crosbie: I am sorry. I did not quite follow your statement.

Mr. Cassidy: In large measure, will the proposed assistant deputy minister have the same responsibilities as the

executive director of financial institutions has now?

Mr. Crosbie: Yes.

Mr. Cassidy: I am not sure where the investigative unit was prior to this proposal. Was it under the registrar or was it somewhere else?

Mr. Thompson: The investigative unit was attached to Mr. Cooper's section of the ministry, the insurance side.

Mr. Crosbie: There are changes, but basically the ADM's general overview is the same as the executive director's. I would agree with that.

As a result of recent events, I think what has to be recognized here is these areas are going to require a lot more attention than has been devoted to them by anybody else in the past.

I am not just referring to the trust company problem; I am referring to the problems we are having with credit unions as well as with insurance companies. I am also referring to the problems we are having with the concept of one-stop shopping in financial institutions, the activity at the federal level, specifically Mr. MacLaren's committee, and the movement in the United States and elsewhere in the world towards various types of integration of financial institutions.

We in Ontario feel we want to have the capacity to deal with these issues as well. In my view, the assistant deputy minister's position is taking on greater importance than did the executive director's position.

Mr. Cassidy: Is it normal within government that a particular policy area would have the separation of policy under the administration proposed in this particular area? Would the ADM ostensibly carry that policy and the commissioner be there to make or recommend policy?

Is it also normal to have the kind of duplication involved where the ADM is meant to carry out policy, but the commissioner is also there to keep his or her ears open to what is happening in the industry, and if there have been smoking guns or other problems, to come weighing in and get something going?

Mr. Crosbie: I do not think it is entirely without precedent, even within our ministry. The legislation establishing the commercial registration appeal tribunal places an obligation on the tribunal to report to the minister annually on policy recommendations. They make reports on what they have found out, as a result of hearing appeals over the last year, and they make policy recommendations to the minister.

The tribunal is made up of a rather large panel of people from the private sector who would have the expertise. If the tribunal is hearing an automobile case, somebody from that industry would be brought in to join the panel. If it is a

warranty program, then somebody from that area would be brought in.

You have a somewhat similar mechanism of having a tribunal that is able to plug itself into the industry it is serving, not only to make appeal decisions but also to make a policy recommendation to the minister, through the experience of the decision-making process.

Mr. Cassidy: That tribunal is nowhere near the intensity that is proposed in terms (inaudible) of the commissioner.

Mr. Crosbie: No. Granted.

Mr. Cassidy: What is the cost of administering and regulating trust and loan companies in Ontario? What have you budgeted for this current financial year, before having to pay all of the extras because of the trustees?

Mr. Crosbie: I do not know whether Mr. Thompson can give a number that breaks out just the loan and trust corporations.

Mr. Thompson: No, I cannot.

3 p.m.

Mr. Crosbie: One of the changes we are making is to focus on more of a functional basis. The registrar would have his own inspection staff. Right now we sort of combine the inspection staff to do both the insurance and the loan and trust in a sort of combined basis.

Mr. Cassidy: It will take a few days to do it, but could we ask the ministry simply to go through the numbers and indicate what the cost has been, what the trends are, what you were spending three or four years ago and what you are spending today, leaving out the extraordinary costs that have been entailed with the Seaway and Crown Trust affairs and then what the projected cost budget will be for the oversight of trust companies?

Is it possible for the ministry to also compare that with the cost of oversight of federal regulations, since that is the most closely comparable function? You cannot do it tomorrow, I realize that.

Mr. Crosbie: We will do our best. Once again, I think the federal government has a similar problem in that it is the department of insurance which looks after the loan and trust end. Whether their budget is broken out specifically to show what they spend on loan and trust administration as opposed to insurance administration, I really do not know, but we will look and see what we can do for you.

Mr. Cassidy: I have other questions, but perhaps it would be fair for me to yield and then come back in, if that is appropriate.

The Vice-Chairman: Mr. Renwick was indicating that he

had some questions. Is there anyone else? Mr. Renwick.

Mr. Renwick: My irritability is verging on paranoia now. I have a very real reservation about walking into the trap that my colleague walked into a little while ago and that is--

Mr. Cassidy: James, how could you say that?.

Mr. Breithaupt: Just because everyone is out to get you does not mean you are paranoid.

Mr. Renwick: There has been an awful lot of snow around this week.

I do not happen to have an ideological view about regulation but the trap is perfectly obvious that this fantastic net of regulation that the government has propounded allows you an orderly retreat to a less regulative provision and, my colleague, you will be able to say it is with the support of the New Democratic Party.

Mr. Crosbie: Which they support.

Mr. Renwick: The problem, fundamentally--I happen to think your scattergun approach has come very close to missing the targets. My paranoia is that I simply do not believe that the government can come forward with this massive regulatory exercise as an answer to what went wrong in the ministry in the field of regulation of the loan and trust corporations.

I do not make distinctions about people in the financial community. They have skills and abilities and they are part of the vitality of the world. There is nothing that says that an entrepreneur cannot run a trust company or that some other people should run trust companies and the entrepreneurs should sell moose pasture. It just does not work that way. So I am not making any judgements about anybody in anything with respect to whether they did or did not do anything wrong in either the criminal law sense or in the sense of commercial fraud or in the field of offences against the regulations of the statute.

I am immensely concerned to find out what went wrong, and again, I am not interested in finding anybody who made a mistake or who should be pilloried about it.

You had a regulatory system in this Loan and Trust Corporations Act, which has been in existence since 1973 and much earlier than that. What went wrong and what was the vacuum in the statute that you felt required the action which you took?

I am not talking about the statute that was introduced in December, because I am still of the view that if the regulatory system that was mirrored in this statute had been effectively administered, there would not be the need now to come forward with this blanket regulatory system which will, unless I am advised otherwise, for practical purposes throttle the loan and trust business in the province and will do much more harm than good in the long run.

The reason I feel that is because no one has told me what went wrong. Something must have gone wrong if we have a white paper and a three-and-a-half-hour presentation on the regulations and on all the avenues that have now got to be covered. Is this committee ever going to know what went wrong?

Mr. Crosbie: With respect, Mr. Renwick, I thought the documentation that was filed in the House substantially demonstrated what went wrong. I thought the Morrison report clearly demonstrated what when wrong.

Mr. Renwick: The Morrison report has an immense number of assumptions that certain judgements were wrong. If you want to tell me which judgemental calls went wrong and you could not deal with, I would like to know what they are. Value of real estate is a judgemental call ultimately.

Mr. Crosbie: Yes.

Mr. Renwick: You did not agree with the judgemental call that was made. I do not happen to believe at this point that we were dealing with some kind of scam. Whether we were is not my concern. Somehow or other, something triggered the ministry off to say this act and the regulations under it are inadequate.

What, by chapter and verse, is wrong with the present system, before we launch into this overall scheme to redo the whole of the loan and trust corporation world?

I find it difficult to read in the white paper that you are not interested in restructuring the industry, yet you put before us this immense presentation. I wish the minister was here, since he is the responsible person as far as our parliamentary system is concerned. In fact, the net effect of what you are doing will restructure the system into a straitjacket--being aware of the trap I am walking into, I should say it will restructure the system in such a way as to almost put a straitjacket on it.

It is not a question of the short term, as set out, about the figures. It is a question of the longer term, the movement of the industry into the financial intermediary position.

The provision of money for mortgages is a dramatic growth. It is not a decrease from whatever the percentages are, 64 per cent of the residential market down to 54 per cent because of the Bank Act. The dramatic part about it is that in the 10 preceding years to the date you say it went from about 12 per cent to 65 per cent.

Naturally you are going to get a reaction. The banks will scream to high heaven, and they did, because they were being done out of a lucrative part of the financial intermediary business.

The social value of people being able, with security, to deposit their money and the social value of the use to which that money was put in terms of providing the funds for mortgage purposes, let alone all the other ancillary things that have been

developed by trust companies but are basically still fringe operations, may have great areas of expansion.

3:10 p.m.

Was there any failure by the regulatory authorities within the Ministry of Consumer and Commercial Relations under the existing act?

Mr. Crosbie: When you say "any failure," there are obviously powers which, had fact situations been interpreted differently at an earlier stage, might have been handled differently. It would have been possible to handle them differently.

As came out in the Morrison report, I think there was a very considerable amount of camouflage involved in the whole process. This was not an easy situation to analyse and assess.

I think, too--and this is one of the aspects of this matter which I think has to be taken into account--that prior to this event we had a fairly long period of time when the administration of loan and trust corporations functioned quite smoothly. I think you may get into a mind-set, if I may put it in that way, or a pattern of doing business and carrying out inspections where you have traditionally been able to take an appraisal report. If it is there and you read it and it says all the right things, you can accept it at its face value.

We have not spent a lot of time trying to determine whether or not that particular appraisal was a fraud. The point I am making is that when we came into 1982, we did so with audit reports from an internationally renowned company--from two of these companies--which, in effect, certified that the companies complied with the act in all the terms that we have reviewed in the last few days.

Our people became aware of certain problems. They were not satisfied and began a series of investigations and efforts to apply various provisions in the act, not all of which were capable of forestalling all the activities we were trying to deal with.

We were working in conjunction with the federal government to try to establish this question of values. We were quite literally in the midst of trying to set up the joint task force to review five companies--you will recall two of them were federal--when the major activity, the Cadillac Fairview deal, came through. That, on top of other things, created a large change in circumstances and this is where you get into the question of value.

If you do an analysis and make certain assumptions about value--and this had to be done--and if you make certain assumptions about the lack of value and, therefore, the overvalue of mortgages, and apply that analysis to your rules about borrowing base and about the capital available and about requirements on liquidity--

Mr. Renwick: I do not have a problem with that.

Mr. Crosbie: --you reach a conclusion, as was done here, that these companies did not have an economic base on which they could continue in business.

Mr. Renwick: Let me try to phrase my question a little bit differently. I am not suggesting for a moment that there are not statutory changes--and I am talking about statutory changes--that have to be made. The select committee report mirrored some of them. The events of the last while have indicated clearly other statutory changes, that is, objective requirements that a person outside can assess and deal with through the administration.

I am talking about the regulatory scheme envisaged by the white paper, not about the statutory changes. The regulatory scheme, the oversight, that activity.

Are you saying to me that in the light of the experience which you have had and with an increased staff directed towards the kind of problems you have seen and the present regulatory framework, you could not accomplish what you want to do, namely to protect the various public interests that are involved in this business? Do you need any further elaboration of the regulatory scheme?

Mr. Crosbie: Over the existing act?

Mr. Renwick: Yes.

Mr. Crosbie: We are saying yes.

Mr. Renwick: I know you are saying yes. I am asking why.

You see, I am not interested in finding a scapegoat for the game. People do have new situations thrust upon them. They do not have adequate staff to deal with it or, as you say, they have a mindset that the world is all orderly and there is nothing urgent about what is going on. You get into all those routines.

But now you have had that experience. The existing statute was related, so far as I know, only to a small, limited number of companies in the loan and trust corporation field. If I am wrong I want to be corrected on that; if this is rife throughout the trust business, we had better know it now. If in fact you are dealing with a small number of companies that, either because they were new to the loan and trust world by being recent incorporations or because they had changed hands in ways that turned out to be inimical, in your view, to the public interest, is the existing regulatory scheme not sufficient to monitor the trust industry?

Given that the word "trust" is there and that there are principles and rules to be enforced with respect to the character and competence of people who own the companies, with respect to the sources of their funds or with respect to the network of subsidiary and affiliated companies, are there not statutory changes that, coupled with whatever expansion is required of the existing legislation and separation of the function of the

registrar from the superintendent, would in themselves be adequate?

I keep reading the regulatory system. It seems to me to be quite comprehensive. It seems to me to have a lot of authority behind it. It seems to me to indicate that an up-to-date, competent staff knowledgeable about the world could oversee the business--coupled with statutory changes, which I believe are necessary. Would that not be a much better approach?

On the other hand, you are saying to us, "We must establish not only what is," as my colleague says, "a most elaborate structural regulatory framework, but also very detailed and very specific regulations." It seems to me you are creating some kind of albatross, which is not going to achieve what you want. Some smart expert accountants, lawyers, conveyancers, appraisers and so on can quite legitimately find their way through it, because the rules will be so complicated that only experts will know.

Mr. Crosbie: I think this is always the curse of any legislation. You either make it simple and straightforward and leave the loopholes of omission, or you try to plug all the loopholes and make it so complicated it is difficult to administer or understand. I did not see that what we were proposing to do here should be interpreted as a morass of regulation.

3:20 p.m.

As you were forming your question I was on the verge of saying, "Yes, I think I can do exactly what you are saying." What we have attempted to do--and perhaps this is where the presentation of the white paper creates a sense of greater change than is actually there--we have talked, as this document did, about the need in many places to codify things and make clear what the rules are. We have talked about creating a new appeal process, not to make the situation more difficult for people, but to have a fairer administration of it so that the registrar is not acting unilaterally and arbitrarily. His judgement can be tested, as maybe it should be in many situations.

The type of information that forms a plethora of detail in here is information we are told, in talking to many of the people in the trust industry, they would have no trouble providing. It is not going to cause a morass. I am not for a moment going to suggest there are not some provisions in here that on more mature consideration and having the benefit of the views of other people might not very well be discarded or changed substantially.

Mr. Renwick: That was the trap I was referring to. You would be able to say, "with the support of the New Democratic Party."

Mr. Crosbie: I think we are both going to the same goal. Certainly, I am not trying to set up a type of organization that cannot be administered. That would be totally counterproductive.

I mentioned in my earlier comments, and I sincerely ask you to consider this problem, the balance needed to set up a system we as regulators are required to administer so we do not immediately

get crucified: "You left a loophole there. Why did you not fill that? Why did you not inspect that?" You have been very kind in saying you are not out headhunting to lay the blame on a particular doorstep, but the inevitable question is, "Why did it happen?" If something goes wrong, usually there is a cause. There is a tendency to say, "Let us stop that from happening again," and to try to correct the loophole or whatever it is that led to the fault.

What we thought we were doing here, quite frankly--and much of it may appear as excessive legislation, but a lot of it, as I think you will appreciate, was asking or requiring the trust industry itself to establish internal management rules. For instance, if we are going to say there should be an audit committee, there should be an investment committee in a corporation that is handling trust funds, the obvious question that usually gets thrown at us is, "If you have made it a requirement, how are you going to know it has been done?"

If we say, "We are not going to set up an inspection process. We do not want that kind of regulatory control," we are immediately accused of being irresponsible, but if you are going to make requirements in the act, then surely you must know whether they are being complied with.

That is the trick. Where do you get that balance between the type of statutory requirement that is self-enforcing and the kind that requires the intervention of some sort of inspector or some other person to certify to or satisfy the public or the government that it is being complied with? If people can show us a way of doing that and simplifying this process, I would be glad to have any recommendation they can make. It has certainly never been my goal to set up an empire of regulations that are impossible to administer.

Mr. Renwick: I am from Missouri. I try not to be an antiquarian around here, but at the risk of referring to it again, the present act with the statutory improvements that were in the select committee's report and with certain other statutory improvements, perhaps a little bit of tightening up of the examination and reporting procedures and of the guts of the whole thing, an adequate and competent staff, would be quite sufficient.

Mr. Crosbie: I do not know that we are that far apart really. What we have done here is what you are asking for.

Mr. Renwick: How many trust companies are registered in Ontario to do business?

Mr. Thompson: About 90.

Mr. Renwick: That is right, 90 companies. I agree and I have always thought it was the understanding that it was important to deal with the incorporation of Ontario companies, but if you were registered to do business here, it did not matter where the hell you were incorporated, you abided by all the rules. I thought that was a simple rule, subject to the limitation of the Constitution, which is not all that great.

Unless you are telling me this was the tip of the iceberg and that the appraisal methods and business-decision methods used in these 90 odd companies amounted to a general deterioration in the trust industry of the 90 companies, then I can look at a totally fresh approach.

If you are talking about five companies in Ontario for which you have responsibility--even though two of them are outside and three of them are trust companies--and that they created the problems with which you were faced, then surely in light of that, we should not be asked to do a total overhaul of the regulatory scheme of this kind of business.

I think it is. You can say there are a lot of words but not much substance, but I read it as an immensely overreaching regulatory process that you were setting up.

Mr. Crosbie: I would not call it many words without much substance, but I would say there is a lot of substance here which I do not think has the same regulatory mesh or network or complexity that you are suggesting.

To deal with your other question, because I do not think we should leave it hanging, we are not talking in terms of the tip of the iceberg. There are other companies we have had problems with and we have been dealing with them. But by and large the trust industry is well managed and well run and does not cause serious problems.

Mr. Renwick: These are the ones which are the focus of a lot of attention and there are probably another half dozen, at least from what I read in the papers. There are various agreements that have had to be entered into with respect to five-year management agreements and so on with respect to the one in London and so on.

The Vice-Chairman: If I may interject at this point, based on your comments, Mr. Renwick, it is my understanding that this committee, on reviewing this white paper, may well have recommendations following along the line of your very comments.

Interjection.

The Vice-Chairman: I am saying it could. The intent of this process is to get that sort of input. That is why we will be hearing from other areas.

Mr. Renwick: I can say with great respect that the day we become the government, I would hate to have this elaborate organization to operate.

Mr. Hennessy: Don't hold your breath.

Mr. Gillies: I would like to get Mr. Cassidy to repeat Mr. Renwick's comment about overregulation so I can frame the Hansard.

Mr. T. P. Reid: I think what Mr. Crosbie just said goes to the heart of what Mr. Renwick was saying. If there are another five or six with which you are experiencing difficulty, what in effect you are telling us is that you are able, under present legislation, to deal with those, presumably satisfactorily.

Or are you telling us we are back to, "Everybody is a nice guy in this business. We are all nice people together and moral suasion has won the day. These five or six that might have some difficulty are agreeable to the implications of the registrar and everything is fine"?

Mr. Crosbie: I can answer that in this way, Mr. Reid. I think with most regulatory legislation, whether you want to talk about the Criminal Code or anything else, you are writing it for five per cent of the population, whether you are talking about the population at large or the loan and trust industry. The fact that the rest of the trust industry is not causing problems is not because we can regulate them under this act. I think it is because most of them would conduct themselves that way whether there was an act or not.

3:30 p.m.

Where we have problems, what we see is that any of those companies operating under the present act might run into some of the problems again that we incurred here if there is not some improvement in the control mechanism. This might never happen again--I should not say never; that is putting it badly--but we could go for quite a number of years with nothing similar happening again.

Mr. Renwick: Every 10 years.

Mr. Crosbie: Right, and you could tend to say, "Well, you really did not need to amend the legislation." If we did nothing, conceivably we could go for another 10 years without another major issue. Would that be evidence that the present act is adequate, or is it a reflection of the general standard of conduct of the people in the business?

What we were concerned with is what was demonstrated to us, that under given circumstances rather substantial sums of money were made available for purposes which were never the intent of the Loan and Trust Corporations Act.

Mr. Renwick: I am extremely worried about overkill.

Mr. Crosbie: I think that is what the 1969 commission said too. You do not completely rewrite the legislation to deal with a few bad eggs. I am concerned about that myself.

Mr. Renwick: Leaving aside good eggs or bad eggs in this situation, the way you expressed it at the beginning is that regulatory bodies get a little myopic in the world in which they are living and you do not necessarily spot it in the day-to-day flow of demands of work. I happen to think it is possible for the

government to put together a first-class regulatory organization within the existing framework, coupled with effective, positive, objective statutory changes, which will not be unacceptable to either the depositors in the province or the people who want to borrow money for housing purposes by way of mortgage.

Mr. Crosbie: I could not agree more with the goal. That is what I would hope would come out of this. If the deliberations of this committee can cut off what are seen to be excesses of regulatory power and point to a better way of doing it, I would be very pleased to hear it.

Mr. Renwick: That is why I am anxious to see the information with respect to the memorandum, which we got in 1974, about the structure of the registrar's office and which we commented upon, and the structure as it was on the date on which you said you started into a year where these problems became evident and it was beyond the capacity of the staff to deal adequately with the onset of new problems.

That is important, because if there had been little, if any, change, then you have to look at the restructuring of the registrar's branch as a key rather than the minutiae of regulations or, the fashionable view of the day, not even regulations, first guidelines and then the guidelines become regulations and then somewhere down the line nobody can understand any of them.

Mr. Crosbie: I agree.

Mr. MacQuarrie: I was going to make the observation that, like Mr. Renwick, I tend to be a bit concerned about overkill in terms of imposing a lot of additional regulatory powers. At the same time, as we sift through the white paper, we can address these things specifically. I just wonder if now is the time to be going back and forth with this.

Mr. Gillies: Mr. Chairman, I was going to make a fairly specific point. I am wondering if Mr. MacQuarrie is not right. Where are we?

The Vice-Chairman: That was my plan. Mr. Cassidy had indicated he had some questions dealing with specific sections. In the time remaining, I would like to go through the various sections and at least try to get some reasonable coverage, to the extent we can, of these sections, if that meets with the committee's approval.

Mr. Gillies: Fine. That being the case then my questions are about financial standards and controls--

The Vice-Chairman: I was going to ask if there are any questions that immediately come to mind arising out of part I that was presented today.

Mr. Cassidy: I have a final comment relating to that earlier point because I think it is germane in that it relates to this question of regulation, on the one hand, and, on the other

hand, to the decision not to recommend any restrictions of ownership to correspond to the banks. Was it the staff in your study of policy who arrived at the conclusion that no restrictions of ownership were desirable, or was that a given as a consequence of the government's political decision?

Mr. Crosbie: No, it was very carefully canvassed. We did not start off from that point of view. We looked at the pros and cons. These issues were discussed at policy level in government.

Mr. Cassidy: I suggest you can either have ownership restrictions and less regulation, or leave the Rosenbergs and their ilk to control trust companies and have the amount of regulation that is proposed. In other words, the two are to some extent interdependent.

I want to say to your colleagues, Mr. Chairman, that in effect they are caught between the devil and the deep blue sea. Either they have the amount of regulation that would normally be repugnant to them as Conservatives, or they have to take steps to prevent the likes of Harold Jackman controlling Victoria and Grey and the other people who have their hands on large chunks of economic power and who also are very close to the Conservative Party.

The Vice-Chairman: Perhaps, Mr. Cassidy, we might deal with limitations on ownership under the appropriate section within the white paper. It is dealt with there.

Mr. Cassidy: This is the only explanation I can see why Conservatives are suggesting more regulation.

The Vice-Chairman: I will allow some questions on ownership as we proceed.

Interjections.

The Vice-Chairman: Order, please. I have not had to hammer the gavel before. Do we have any questions arising out of the overview, that is, part I?

Mr. Renwick: At some point, the whole restructuring of part I will come up. Much as I admire the deputy and his capacity for finding common ground between him and me on these matters, I would like to refer to item 5 of part I, "The registrar of loan and trust corporations should be given much broader and more far-reaching regulatory powers."

The rest of the fan of the new structure is involved with giving him the capacity to exercise those regulatory powers with assistance from the deputy minister and the investigative unit and so on. The general comment I made fastens upon part I, and particularly upon the question of item 5. I do not have at this point any further comment on part I because that to me begs the question. The question deals with going through the other parts of the overview, starting with the more specific matters related to the actual nuts and bolts of the loan and trust incorporation procedures and so on.

Mr. Crosbie: Could I raise a question? It goes in part to that and to your experience on the 1975 select committee.

As I understand it, that committee opted for a system where when you qualify, you are in as a full-fledged company. What is being proposed here is based on the concept that our experience has shown that people come into this industry with a relatively small amount of experience. They may start as a loan corporation or they may incorporate themselves as a trust corporation. They may have been a real estate corporation before and they do not really have the skills.

This led us to the conclusion that the safer approach was to have some system whereby, as people demonstrated their capacity, you could allow them to increase their borrowing powers and borrowing ratio, and eventually move into a trust situation and then a full-blown or full service trust corporation.

3:40 p.m.

If I read the select committee report correctly, it preferred that when you become a trust company, you are a trust company and have all the powers of a trust company. If one rejects the concept that we do not have the sort of incremental growth of companies with a concomitant sort of supervision in which the registrar would be very much involved, then a lot of the regulatory process goes with it. I just mention this because I think it is an important aspect of it.

Mr. Renwick: Since you addressed that question, I will make a brief comment about it because I noticed the gradualism you were speaking about in here. I think the select committee at that time was aware of the fact it was pretty traditional trust companies that were moving into the financial intermediary business in a much more extensive way.

Mr. Crosbie: They were really coming the other way.

Mr. Renwick: Yes, and I think the gut question of it is that here we are saying very specifically by statute that the trust company is not borrowing money when I walk in and put \$100 into an account. I am turning that money over to it as trustee for me. I am (inaudible) trust and the beneficiary of that trust. That is a hard concept for people to understand.

We then say that as trustee you cannot profit from your office, so we give them the statutory authority to keep the spread, on condition that they protect me in their duty as trustee. We say to them, "You can take my money and you can do with it as you want and keep the difference." That is the guts of it. But you are a trustee, and it does not matter whether you are a depositor or a guaranteed investment certificate person, and you have the name "trust."

If the state of the industry has come to the position that they are not entitled to use the name "trust," are we not better to scrap the name "trust" and not kid anybody about it and just simply treat them as acceptance companies, loan companies or whatever you want to call them?

On the other part we were impressed by the gradual withdrawal of the trust industry from the actual administration of estates of living persons and deceased persons, unless you happen to be extremely wealthy. We tried to indicate it was important that there be the traditional facility of a trust company. If a guy dies leaving a house, some group insurance, a pension plan, a few dollars, a summer cottage, a snowmobile and a boat and you add it all up, it may come to \$400,000 or \$500,000. When the guy was alive he did not think he was worth that.

But you cannot get, to my knowledge, a trust company that is interested in administering that, and we tried to make a very specific recommendation that it should be looked at. We were thinking of it traditionally and that the sooner a trust company got into the whole range of business, the sooner it justified the use of the term "trust." They had the estates agency business to handle and they had the privilege of keeping the spread with trust funds on it. We felt in a sense that anybody in the business had to come in with a plan to reach that goal and that he could not just come in and be the financial intermediary, because all that meant was that you got access to an inventory of money, which is always of immense attraction.

When you were reading this, I was a little bit concerned that somehow or other they really had to prove it before they could get into the estates agency business, because a hell of a lot of them would prefer never to be in that business, and I do not know who the hell is going to do it.

Mr. Crosbie: In your report I know you did recommend that there be a further study of the estates, trusts and agencies because, as is pointed out in that report and as is very true today, the estates, trusts and agencies side of a trust corporation is probably cross-subsidized by the financial side of it. It seems to indicate the fees and charges for administering trusts have not kept pace with other costs. Obviously, this is one of the difficulties. I think there is still a very great need for trust companies for this purpose.

In terms of restructuring the industry, when this term was used in the federal white paper, it was talking about eliminating this trust relationship and reducing it all to a debtor-creditor relationship. Such a restructuring would abolish this legal fiction we have created in the province which, in part, we have to have to maintain our constitutional right to be in the field.

Mr. Renwick: Not only that, there is more to it than that. You have created in the minds of the public the sense of the term "trust."

Mr. Crosbie: Oh, I know. I agree. But that has been the fault--

Mr. Renwick: It is historic. It is not a legal fiction. I know what you mean.

Mr. Crosbie: I was getting back to your observation about when people put money on deposit in a trust company, they do not understand that they become the beneficiary of a trust.

Mr. Renwick: But they do know there is something extra special about the company.

Mr. Crosbie: Oh, yes.

Mr. Renwick: They may not know the sense; they may not distinguish between--

The Vice-Chairman: If I may, gentlemen. I appreciate the flow of information going on here, but our time is getting somewhat short, and I know there are some questions arising out of the other sections. If I may say at this time, try to deal with them.

Mr. Cassidy: My comment is extraordinarily brief. From listening to the deputy minister, I gather it is envisaged trust company legislation would see to the possibility that a trust company might never actually offer traditional trust business.

Mr. Crosbie: We are concerned about the opposite. We are concerned about the same thing Mr. Renwick mentioned.

Mr. Cassidy: Then the registrar could keep a trust company from ever doing traditional trust business on the grounds he felt it never was at the point where it was grown up enough to do it.

Mr. Crosbie: The white paper says a company starting up today would start up as a loan corporation.

Mr. Cassidy: Yes.

Mr. Crosbie: You would not be allowed to hang up a shingle saying "trust company" until you were a trust company.

Mr. Cassidy: Does that mean offering trust--

Mr. Crosbie: Trust services.

Mr. Cassidy: Trust services.

Mr. Crosbie: Fiduciary services.

Mr. Cassidy: In addition to simply holding deposits in trust?

Mr. Crosbie: Yes, because a loan corporation holds deposits. It does not hold them in trust. The papers and the public do not read the fine print to make the distinction. We are concerned with companies that hang a shingle saying they are a trust company and they may be only nominal trust services. I think this issue should be addressed by this committee.

Mr. Cassidy: Mr. Chairman, I can see there is not much time, but I want to raise another point that keeps coming up.

It was argued quite strongly that the registrar did not exercise powers under sections 153 and 154 of the existing act because the company might fight back or because it would take too long. There were a number of things put forward. I never quite understood the argument for the registrar failing to indicate to the companies that the actions taken would be made public. The simple action of publicizing the names of some companies in a month-to-month registration would probably have been the single most potent weapon available to stop the kind of abuses of powers that took place, and it was never used. I believe the act is silent on that. It did not say you could, but it did not say you could not either.

In the recent experience, if the registrar held back from taking action on the grounds that once word of those actions leaked out, it would impair confidence in those companies and therefore harm them and put them out of business, is that argument not equally cogent with respect to such things as reducing the multiple for a company or moving in all the other ways put forward here, short of actually moving in and taking the place over?

3:50 p.m.

Mr. Crosbie: I would like to make a brief comment and then ask the registrar to comment on it. I think it is a fair observation that as a general practice when we find a trust or loan corporation in difficulty, our first mode of operation is not to take an ad out in the paper and try to embarrass them into order. The very fact they are deposit-taking organizations makes them sensitive, as you said, to that sort of publicity.

What we try to do is work with them. It may be they got offside through some inadvertence or some minor mismanagement or something of that order and with proper co-operation we can work it out.

Perhaps, Mr. Thompson, you would care to comment on some of your experience around this question.

Mr. Breithaupt: Could you comment on the multiple scene and the reduction--to the effect, as I understand it, that you would not likely reduce the multiple, you would require more capital or the subordinate--

Mr. Crosbie: No, we could not reduce the multiple under the legislation prior to December 1982, and that was one of the problems.

Mr. Cassidy: Is it proposed that any orders with respect to the multiple would be made public or would they be made public only if the company chooses to appeal? Or will appeals be held in camera?

Ms. Parrish: The borrowing multiple would be on the registry of the company.

Mr. Cassidy: That is not the same. You can change that, but people may not know unless someone happens to be very smart or very lucky and finds out. I am thinking of the securities commission; when it exercises a similar type of action it makes it public.

Mr. Crosbie: On the other hand, because of their borrowing situation, some of the banks are operating at a substantially reduced multiple to what they had a few years ago. Should they be posting that in the lobby of the bank? "We are now operating on such and such a multiple because of our financial position."

Mr. Cassidy: Is the financial press informed if a bank's multiple is reduced?

Mr. Crosbie: No. What I am saying is that they are operating. I did not say it was reduced. They have a range and they find--for example, a trust company might be authorized to operate at a 20-time multiple. If it is properly run and gets into difficulty, it may find it has to drop back and operate at a lower multiple because of the nature of the investments in the conservative investment process.

Mr. Cassidy: That is a management decision.

Mr. Crosbie: Quite so, but if they are incapable of operating at their maximum multiple, it may very well be a reflection of their financial stability.

Mr. Cassidy: We are talking about when a regulator steps in and says, "I am going to cut your multiple from 20 to 15."

Mr. Crosbie: The short answer is that the legislation does not contemplate that being posted publicly. It is probably an obscure public record.

Mr. Cassidy: I see. Does the legislation contemplate that any other orders to the company should be made public, or that they would also be matters of either no public record or obscure public record?

Mr. Crosbie: Murray, do you want to comment on this?

Mr. Thompson: Yes, I want to go back to the thing. There was no power for the registrar to affix terms or conditions to an Ontario incorporated company. Notwithstanding that, we did have these companies on short-term licences. That fact is contained in the register, which is a public document. It was disclosed in the press. There are now companies with terms and conditions. Anybody wishing to know that, it is there. They can come and see the register.

Should we go one step further and publish this fact? I do not know. That is something this committee may well consider, but there are companies now with terms and conditions on their licences. There are companies with short-term licences. These

companies were on short-term licences; that was published and known. I do not know what we should do to enhance that in the mind of the public or whether the public will adequately read it.

With respect to exercising powers, can we cut the multiple? The federal government had the power to cut the multiple on one of these companies; it did it, and they immediately overborrowed by \$70 million. All I say out of that is, "You have to give us the tools to do the job." The tools are enforcement mechanisms to do it.

We are trying to operate in two worlds and we are trying to give a balance on this situation. We will never be able to put in a regulatory scheme that is going to be foolproof or perfect for those who want to break it. On the other hand, we are trying to balance that. Many of the companies operating do not need that regulatory scheme. They will operate with such prudence and care that we could not write it all down.

Mr. Cassidy: I do not think you have answered my question. There were powers which related to recommendations to the Lieutenant Governor in Council and they were not used.

Mr. Thompson: If you will allow me, I am telling you they were used. They were used at the risk of saying that a civil servant used powers he did not have. Everybody knows what that can bring. However, let us go on.

We got the legislation. The legislation was given to us. The power we had to intervene in this company was to sit and wait until it reached a point where there was a deficiency of assets over its liabilities to the public. Legislation was brought in to change that test.

We were cognizant of the same legislation at the federal level being used with the Cardinal Insurance Co. The Cardinal Insurance Co. one was fought in the courts for 10 months from the date of the administrative order until the final order of the Supreme Court of Canada. You may be able to do that with an insurance company, but how can you do that with a deposit-taking institution where people are putting in their pay cheques and depending on cheques to be issued for their rent and things like that? It is impossible. It is an intolerable situation.

I refer you to the December 21 legislation. It was carefully framed. It asked, "Is there a state of affairs that could be prejudicial to the public interest?" That was the power that was given and that was the power that was used.

Mr. Cassidy: I still have not had an answer to my question. I think we can get an answer to it. The question was--

Mr. Thompson: I do not mind. Keep going.

Mr. Cassidy: The question was that, given the failure to use those powers that existed before December 1982--

The Vice-Chairman: With respect, Mr. Cassidy, I clearly heard Mr. Thompson say he did.

Mr. Cassidy: No, he did not. He said the Cardinal Insurance thing indicated the whole thing might get caught up in the courts and that might affect the depositors. The consequence was that hundreds of millions more dollars went down the drain in the--

Interjections.

The Vice-Chairman: With respect--

Mr. Cassidy: I am simply asking the question, have you thought through that question of fear of action, despite all the extra regulation you are putting in, along the same lines that led the regulators to hold back prior to December 1982?

Mr. Crosbie: I would like to come to that a bit indirectly. In rewriting these powers, I hope we can come to a process which is not quite as--archaic is the wrong word, but we are working with legislation that is fairly old. The way the sections interrelate are not the best. You do not have a smooth continuum of power where you just need a little here and you have all you need at the other end. We have considered and talked about this issue of using publicity as a tool in controlling a financial institution.

Nothing is specifically incorporated into the white paper except various provisions where, instead of going on the street with the information, you go to the shareholders or the board of directors. You go to the people whose reputation and, perhaps, their own economic salvation is being put on the line by some of the other provisions we were talking about introducing. We go to them and say, "Here is the problem that has to be cleared up."

4 p.m.

We think that was preferable. If the aim is to salvage or rehabilitate a company, not destroy it, then we should avoid the public advertising of faults which are correctible. If the intent is to shut down the company and preclude it from operating, go in and shut it down and tell the public that the company is no longer in business or it is under new management, but that is a pretty drastic decision itself.

Mr. Cassidy: We will return to this, I suspect.

The Vice-Chairman: Mr. Breithaupt.

Mr. Breithaupt: I have nothing further at the moment, Mr. Chairman.

The Vice-Chairman: Are there any other questions at this time?

Mr. T. P. Reid: Are we supposed to quit at four, Mr. Chairman?

The Vice-Chairman: Four-thirty.

Mr. T. P. Reid: I do not imagine there is any point in having a full-scale debate on the holding of the shares or the 10 per cent ownership. It seems to me that in the United States, for instance, the government forced American Telephone and Telegraph to divest itself. Apparently, they did that very profitably all the way around, with the shares of the subsidiaries being broken up and doing well on the stock market, at least until last week.

It seems a commonsense approach would be that if you do not allow a large part of the shares to be held by one individual or one corporation, then the problems we have run into might not have happened, because you are going to have more people involved who perhaps are going to be watching out for their own individual interests.

What you had in the situation we talked about was individuals who obviously controlled without any question what went on in those companies. That, of course, does not answer the question about if you have a chief executive officer, a manager, who is always there doing these things, but it seems likely that if you have a diffuse number of shareholders, the temptation to deal in these ways would be a lot less than it would be by allowing one person to be a 100 per cent shareholder. That just seems to me a commonsense approach.

I guess you could turn the question around and say, "Could this have happened if no one person held 10 per cent of the shares?" Or perhaps a better way would be, "Might it have happened if the largest shareholder held only 10 per cent?" That just seems to be common sense.

Mr. Crosbie: I can appreciate the strength of that argument. As I said earlier, when talking to Mr. Cassidy, certainly I do not dismiss that argument as not having any substance. It is the strongest way to put the argument in favour of a limitation on shares.

It is interesting, though, that the federal government, in its white paper reviewing this and coming up with the proposal for a 10 per cent limitation, felt that in order to encourage the formation of loan and trust corporations it was necessary to allow closely-held companies under a certain value, and the value it thought appropriate for introducing a limitation on shareholdings would not have caught any of the five companies that were involved in our recent problem. That is another aspect of this diffuse shareholding issue.

Mr. T. P. Reid: I can see the argument on both sides. Mr. Thompson has a comment.

Mr. Thompson: It is a serious thing to weigh on this because there is a simplicity to that argument which you can quickly grasp. However, looking at the consequence of it--and we tried to set this out on page 23, asking, "What if you suddenly decided tomorrow that everybody had to reduce his holdings in

trust companies down to the 10 per cent level?" As we quickly came from what we had in existence, you would have required probably \$2 billion to \$3 billion in capital, to shuffle all this money around, at a time when our capital markets were sorely put to meet demands elsewhere.

How would you effectively do this, stage or phase it in, and would it be productive to the country as a whole? We felt that was a consideration we should put forth, because these companies have been in existence for many years and we are going to affect many of them. The problems we have had are not foreseen and we should consider the whole effect on the capital markets of Canada to do this sort of thing. We put that in there because we felt it was an important consideration.

Mr. T. P. Reid: I do not want to give windfall profits to anybody either, but our suggestion is that it be phased in over 10 years. The way capital markets are going I am not sure whether they would be badly affected these days. The banks, at least up to this week, have been trying to shovel money out to people--but I guess we will get into that.

Although my mind can only absorb so much of this stuff at one time, I would like to raise the key question of valuation. I understand that is something that is going to be arrived at by people in the industry, the assistant deputy minister, the advisory council and our federal friends. Everybody presumably is going to come up with a method of valuation that everybody can generally agree on and it will then be used as a test against the real estate assets of the company.

Is that the way valuation is supposed to be arrived at?

Mr. Crosbie: I think what we are most likely to arrive at is some statement of principles. I think you will find valuation is so much a question of assumptions made by the appraiser at the outset.

Without going into a great long story on this, one of the three standard techniques in appraising properties is income flow. Just by making certain assumptions about what the income flow is going to be, it can vary widely.

If you are talking about an apartment building, what is your assumption about vacancy rate, rent increases, the cost of money over the next 10 years, taxes? If you choose to change any of these factors by two or three percentage points you come out with quite a different result.

Somebody could set up a scheme and say to an appraiser: "Here are the parameters: I want you to appraise this apartment building on the basis that it is going to be 98 per cent occupied for the next 10 years. I am going to have rent increases of X per cent every year and my cost of money is Y." So an appraiser really goes through a mathematical exercise and gives you a result.

Mr. T. P. Reid: Any result you can ask for.

Mr. Crosbie: Exactly.

You may have heard of people who say: "A property is worth what I say it is. You work with my numbers and you will get my answer."

Mr. T. P. Reid: Given all that, are you optimistic we are going to be able to arrive at some scheme of principles that we are going to be able to apply? Or will it come down to the fact that basically they are going to be discretionary at the--I will not say whim--

Mr. Crosbie: The act right now just talks about value of real estate. It puts a limit of 75 per cent of value. It has other constraints because there is so much in different types of real estate. What we are attempting to do is put some words around value of real estate that reflect this concept of conservative or prudent valuation. Also the wording should avoid or disallow speculative valuations, and that is difficult.

I think all of us have had experience with another end of the scale of things--an expropriation where people are trying to put on the highest value on property. We all have seen how easy it is to get two, three or four appraisers, each with a different opinion of the value.

4:10 p.m.

I do not think we are going to be able to write into this act anything that is going to eliminate a fairly wide range of opinion on the actual value that different appraisers might be prepared to arrive at. One practice that some companies use is to combine market value, income stream and replacement value. They look at all three and if they are consistent, then they are fairly comfortable. If one is widely divergent from the others, they look at it to find out why and it may lead them to an adjustment of the value. It really is an opinion business.

Mr. T. P. Reid: I have a real estate licence, among other things, so I understand this. What I am trying to get at is that what we are doing here is not necessarily going to resolve the problem. In fact, these things will still wind up in court, unless we make some provision somewhere for some independent body to make a final evaluation that says, "Property A, under these general principles, is worth, let us say, \$500 million," to pick a figure out of the air.

Mr. Crosbie: A nice round number.

Mr. T. P. Reid: Otherwise, how are we going to get out of where we are at now where you say, or the registrar says, "Given the set of principles I have here, I say these buildings are only worth, let us say, \$270 million." How are we going to resolve that problem, which is at the heart of the matter?

Mr. Crosbie: You will never resolve it entirely, but there is a difference. Let me pick some other hypothetical numbers so that we do not confuse anybody. Let us say I have a property

which I advertise for six months on an open market, and at the end of that six months I am lucky to find a buyer who is prepared to buy it for \$100 million. Three months later, I tell the registrar it is worth \$200 million. Should the registrar be suspicious? Should he say: "I guess it must be all right. You say it is worth \$200 million. The fact that it took you six months to sell it--

Mr. T. P. Reid: Unless I know some neighbour, some Arab.

Mr. Crosbie: All right, but those are the sort of things you get into. If you turned around and sold it for \$125 million in three months, one might say, "That is quite possible." You get into these issues. There are factors you look at, such as what has been happening to the market.

Mr. T. P. Reid: I do not know if this is oversimplifying, but if we had not had rent control in this province, what took place might have gone on for some time without anything happening. That is the statement I will make. The coincidental inflation of real estate value, along with everything else up to that time, the two of those together--it was inflation that led to this thing going on as it did. I do not know, having listened to what you just said, if we get into that kind of situation again, whether we are going to be able to handle matters any better under what is proposed here than we have in the past.

Mr. J. A. Taylor: I have just alerted my colleagues of the trap Mr. Renwick is setting for us, and that you are setting too. You know what it is: Just make a few cosmetic changes and then accuse us of doing nothing.

Interjection.

The Vice-Chairman: Gentlemen, if I may just interject at this point, I think the point is well made, Mr. Breithaupt.

Some questions have been raised about rescheduling. I want to inform you that on Tuesday, February 14, Confederation Trust will not be appearing. We do not have anyone as yet slotted in there.

Mr. Renwick: I am happy about that, because I think in the agenda we have to set aside one session that week and maybe one the next week to regroup on where the hell we are and what is going on.

The Vice-Chairman: It appears this might well be the final draft.

The other question was raised by Mr. Breithaupt. Could we keep the final week of February 28 clear? The Ontario Mortgage Brokers Association has been moved to Tuesday, February 21, in slot number one. Unfortunately, Household Finance Corp. of Canada cannot make it at any other time. It requested the time it is in and, unless something happens in the shortfall, we are going to have to hear the one brief we committed ourselves to hearing during that week.

Mr. Breithaupt: In speaking briefly with a representative of that company, I was informed the presentation deals with one particular point and, therefore, will not likely be a lengthy one.

The Vice-Chairman: It will not likely take long.

Mr. Breithaupt: I am sure we will be able to accommodate them and not take anything much away from the general discussion which will have been going on on a variety of points the day before.

The Vice-Chairman: Hopefully; do you have a question, Mr. Renwick?

Mr. Renwick: It is a brief one on that question of control. I am very ambivalent about the 10 per cent.

The Vice-Chairman: Excuse me. If any members want the rest of the briefs, the rest of the exhibits from their packages, please let the clerk know. Otherwise, they will be retained here for next week. They are in the brown folders. They are the balance of the exhibits.

Mr. Renwick: Of course, this is not to cast aspersions on anybody, but the problem with the 10 per cent ownership is you entrench management for ever. For example, I was really quite amazed at the major life insurance companies which, when those restrictions came in with respect to ownership of stock in those companies, chose mutualization.

I defy anyone to show that the most brilliant corporate tax conveyance or manipulators of any kind ever changed the board of directors of an insurance company at a general meeting of shareholders. I would be surprised if it is not singularly equally difficult to do that with a bank. You would never have the dollars to be able to do it. That entrenchment of management is as equally dangerous a stultification of the system as the so-called freewheeling entrepreneur might be. That is the nature of the world. You have to have some kind of ginger in the pot.

I know the idea has been mooted a number of times and I got a short paper on it a while ago from the Legislative Library research as a starter, but somewhere along the line the idea seems to have died as to the possibility of the concept of public interest directors, for example, on a board to make certain the world--

I know people can say, "You would always appoint people who are part of the same club," and so on, but I do not think so if they were appointed by the Lieutenant Governor in Council. There might be two of them on a board of a trust company. I think it is an idea that is worth exploring.

I think the Committee for an Independent Canada did a reasonable amount of work on that concept at one time. I think Michael Gough--I do not know where he is now but he was with

Treasury. I know some years ago he did a paper on the public interest director.

4:20 p.m.

Mr. Renwick: It has a reasonable amount of appeal to me as one possibility. I do not think there is any pat solution to it, but it is one add-in to the kind of public protection we might look to. No matter how much a member of the club he is, I still think if he is appointed by the Lieutenant Governor in Council as a public interest director of X and Y trust company he is (a) likely to be a knowledgeable person in the business world, and (b) he would by and large exercise his public duty to see some of these things were done properly, the internal management processes and procedures. Again, it is not a cure-all but I certainly would like to throw it into the pot as a matter which we should seriously consider.

Mr. Crosbie: Mr. Chairman, I will see if I can get Michael Gough's paper because I would be quite interested in pursuing it.

Mr. Renwick: He may know, also, of other--I do not know whether they still call them public interest directors or whether there is some newer or more fashionable name to it or not.

Mr. Crosbie: Assuming, of course, that we can do it without further regulations.

The Vice-Chairman: On that point, members of the committee, I thank you very much for your attention. I think it is an appropriate time to adjourn. Please reconvene at 10 a.m. on Tuesday.

The committee adjourned at 4:20 p. m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 14, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Hennessey, M. (Fort William PC) for Mr. Kolyn

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witness:

Beaton, J. W., Past President, Canadian ASA Society of Appraisers

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 14, 1984

The committee met at 10:02 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Vice-Chairman: Members of the committee, I am going to recognize a quorum. We are a little beyond the normal starting time.

On behalf of the committee we should welcome back our clerk. Although he is moving a little slowly, he seems to be back in order. I might say it is a heck of a way to get a vacation.

Hon. Mr. Elgie: What did you do, Doug?

The Vice-Chairman: You were not aware?

Hon. Mr. Elgie: No.

The Vice-Chairman: He had a snake bite and he had appendicitis, but he appears to be coming along very well, and on behalf of the committee we are happy to see you back.

CANADIAN ASA SOCIETY OF APPRAISERS

The Vice-Chairman: Gentlemen, you have been provided with the brief of the first group of presenters, the Canadian ASA Society of Appraisers. It is Mr. J. Wallace Beaton, past president, is that correct?

Mr. Beaton: Yes, Mr. Chairman.

The Vice-Chairman: Please sit, Mr. Beaton, so you can be recorded in Hansard.

Hon. Mr. Elgie: So you can be comfortable, too.

The Vice-Chairman: If you have some others who would like to share the table with you, please identify them or have them identify themselves in case they should be asked any questions.

Mr. Beaton: Mr. Chairman and members of the standing committee, first of all I would like to identify the other members of the society who are here today, because we are a group.

Hon. Mr. Elgie: You can bring them right up with you.

Mr. Beaton: We have Mr. Perry Philips, who is president of the Toronto chapter; William Payton, who is the past president

of the Toronto chapter; and Donald Forteith, who is a member of the society as well.

The Vice-Chairman: Thank you. Would you gentlemen like to come up to the front just in case some questions might be directed to you? You may find a place where you will want to put in some information. Mr. Beaton, would you like to proceed?

Mr. Beaton: We have written a short brief, of which I hope you all have copies. We are not really trying to deal with very many of the matters in the white paper, merely those on which we feel we have some views that should be heard or on which we can offer a contribution that might be useful.

Perhaps I should say by way of background that at the time of the Cadillac Fairview Corp. closings we all felt some concern about the things that were happening and the things that were being said. We sought all the information we could.

There was an awful lot of information which landed in the registrar's office of the Supreme Court in the ensuing couple of months. Using that, one thing led to another, and we ended up by preparing a case study for the information of the appraisal profession, and other members of the public who might be interested.

We have given this case study seminar, first of all publicly, and then three more times sponsored by other groups who were anxious to have it, such as the biennial managers' conference of Canada Mortgage and Housing Corp., which, I might say, are the largest apartment dealers in Canada. I believe they have sold about \$600-million or \$700-million worth of apartments in the last six years, which will perhaps give you a thought about the overview of the mortgage and foreclosure economy.

We then had the Canadian Real Estate Association and then the Institute of Chartered Accountants, who also decided they would like to offer this case study to their members.

If it would be useful to the committee, Mr. Chairman, I might give a copy of the case study book to the clerk and you would have it if you wish to refer to it. It is not a key matter in the brief, but it may be of some interest.

The Vice-Chairman: Certainly.

Mr. Beaton: It has become a very substantial document.

The Vice-Chairman: It might assist some of the members.

Mr. Beaton: I might say that if it is of no use to the committee generally it could be of some use to you personally, because if you go to the end of the first tab and you find the pulled-out schedule, the complete apartment market is exposed as it existed during the 18 months leading up to those closings. Armed with this, you can appraise any apartment building in town yourselves at a very minimum cost, because all your research is there. It is all done for you and I think it is nicely scheduled.

Hon. Mr. Elgie: Is this a plea for membership in your association?

Mr. Beaton: No, that would go the other way. That, I think, would indicate you do not need to bother with a membership. But we have done this, and we have done it because it serves several causes at the same time. It serves the cause of public information.

We have drawn some conclusions, although they are pro-forma conclusions because the research is not our own. It is the research of others that we have found.

I had a personal interest in doing this. For 12 years I have lectured from coast to coast in Canada on valuation. To put it bluntly, some of my market models have been getting a little bit old and rusty. I am constantly on the lookout for new market models.

I stumbled on this in the registrar's office of the Supreme Court and I said, "Here is the perfect apartment model." Because it is a model. It is the best market model in apartments that I have seen in almost 12 years. So I could throw out the old material and use this, which is why we came to give the seminar.

I said to the chapter committee last year: "Here is this market model. I am plugging it into my new course, but if the chapter would like to use it first of all it would be very welcome to it."

I say that by way of background. We are here because, in a sense, one thing does lead to another. We have, in the process, I think developed a fair store of information and we are very happy to share it.

I am not going to read the entire brief, Mr. Chairman, unless you wish me to do so.

The Vice-Chairman: Whatever you feel is comfortable in providing what your message is to this committee.

Mr. Beaton: Thank you.

The Vice-Chairman: The minister just commented that we are flexible this morning in that one group that was scheduled to appear is not here, so the morning can be as flexible as we wish it to be.

10:10 a.m.

If I may, just before the committee begins--since we are going to be dealing with an area that has been the issue of some questions here at the committee--I would like to ask my colleagues who are learned in the law and who are officers of the court to guide me and their fellow caucus members, if, as officers of the court, they find we might be getting into areas that might have some effect on current and ongoing situations.

Mr. T. P. Reid: You know you will get conflicting advice.

The Vice-Chairman: I am going to have to rely on--

Mr. T. P. Reid: That is what keeps them in business as lawyers.

Mr. Breithaupt: Remember, Mr. Chairman, such an opinion is worth what you pay for it.

The Vice-Chairman: I have to assume I have the best represented here from all three caucuses.

Mr. J. A. Taylor: I gather you are not looking for opinion. You are seeking responsibility.

The Vice-Chairman: I am seeking responsibility, if that is the polite, correct way to put it.

Mr. J. A. Taylor: Maybe Mr. Beaton could comment on that.

Mr. Beaton: Mr. Chairman, this same question did arise when we offered our first public seminar. There were doubts in our minds as to whether we should or could be doing that. We are very fortunate in that a leading lawyer has served as president of the Canadian Association of Business Valuators, with which we have some very good links. We asked him, (a) what he thought and (b) to act as chairman of our seminar.

We did get a legal opinion and a lot of advice from him, which went something like this. We asked, "Are we going to have somebody serve an injunction on us two minutes before the seminar is due to start and have the whole thing broken up?"

He said: "There is no such thing as an injunction or mandamus or anything of that kind in this situation. The only possible problem you can have is contempt of court. Where there is contempt of court, the court does not bother going into a procedural documentation approach. They simply send the sheriff in, and he slaps his hand on your shoulder and throws you right into jail."

Mr. Boudria: Then you have nothing to worry about.

Mr. Beaton: That is right.

Mr. T. P. Reid: No lengthy legal arguments.

Mr. Beaton: None at all. It is as simple as that. We have given this seminar four times under constraints. You get used to them very quickly.

The Vice-Chairman: Except for the fact there might be some small message in that comment.

Mr. Beaton: The message is that you just do not answer some questions, with great respect. You say, "If you do not mind,

I would rather not answer that because it appears to be a sensitive question."

The Vice-Chairman: I will accept that.

Mr. Beaton: The thrust of our seminar was, on the basis of the affidavits that have appeared in the registrar's office--just on the basis of that, not knowing what else will come in later on--on a pro-forma basis from a case study standpoint, what do those apartments appear to be worth? The answer is \$330 million. The reasons are all set out in the document I gave to the clerk.

Why then did Cadillac only get \$270 million? The answer is because the company said it wanted to get out of the business.

It is just like Inco selling all its houses to its employees. If you are going to have an instant sale of everything, you can expect to give somebody either a catalytic or a most favoured customer discount. These situations do occur from time to time. Market value is where everything starts, but it is not necessarily where everything ends. So the market indicates to us \$330 million--\$329 million when we started and, with a couple of clarifications, \$330 million.

Hon. Mr. Elgie: May I interrupt? When you reached that conclusion, was it on the basis of buildings being sold individually or again being sold as a package in your case model?

Mr. Beaton: Individually, not as a package.

On the other hand, it is very hard to see there is much difference. Basically what people are buying is an income stream. They are not buying an apartment building; they are buying a licence to collect income.

The apartment is only a device. It is like a commodity in a sense. Apartment rents are a commodity and you buy because that is what you want to invest in. Somebody else might buy gold futures. You are buying futures. All income property has this characteristic.

But the market is what other people are actually paying for similar streams. Not for similar buildings but for similar income streams, with adjustments, of course, but adjustments based on facts and common sense. There are very few adjustments in the Toronto apartment market. It is a very buttoned-down market. It is not a difficult thing to appraise if you have done the research or somebody has provided it to you.

Mr. Cassidy: Very buttoned-down market; that sounds like a technical phrase to me.

Mr. Beaton: It is not. It is a slang phrase. That is the way it is. This is not true of other apartment markets. In Metropolitan Toronto and area--

Mr. Cassidy: I think what you are saying is there is

enough of a market in Toronto to make it relatively easy to arrive at an evaluation.

Mr. Beaton: That is right. There is a lot of activity and it is the easiest place in Canada in which to appraise an apartment building. I have appraised in areas where there was one apartment building per town sold every two years. I would take five similar towns and so on. You develop case studies to show people how tough it might be and how you wrestle with it. Nothing is easy, but this one is a lot easier.

I am getting into the detail of a seminar which I do not really intend to do today, but it is useful to get a bit of this background because it affects, if not what is being done, certainly the reasons it would seem it must be.

We have started off by saying the events that have given rise to the proposals for the revision of loan and trust company legislation in this province have also raised a number of serious questions for the members of the appraisal profession in Ontario.

These go to matters of appraisal ethics and discipline, the acceptability of certain appraisal methods, the prevailing standards of professional work and, as a result, the perception of appraisers held by the general public, in particular by the financial community. They may also have implications in the teaching of appraisal methods and the enforcement of standards of practice and ethics by the professional appraisal bodies.

For those who are in public practice and are striving to maintain high standards of competence, the existence of what we have called a subculture of marginal or client-dictated appraisals is not just an embarrassment, but an impediment to our effectiveness.

A long time ago Gresham said, "Bad money drives out good." I think it is true bad appraisals tend to drive out good ones. I could expound on that, but I think the principle is probably well understood. It was these concerns that caused our society, for the public good, to prepare the case study on which I have already commented. It is for the same reasons we are making this submission today.

We have set out a few details of our background for the record as appendix 1 to the submission. There they are at the back.

Our society goes back to western Canada in 1952. It started in British Columbia. We have been in eastern Canada for more than 20 years. We are not the major appraisal society in Canada, we are one of the smaller societies. This is not a one-society profession. It is like public accountancy; there are a number of different societies and no two are alike. Their historical origins are different, the composition of membership is different and the weight of functions is different.

Our society is a multidisciplinary society. It embraces all the disciplines, not just real estate but business evaluation,

fine arts, and machinery and equipment. In the United States, our affiliated society, the American Society of Appraisers, is the major society in the field of business evaluation. Here in Canada and in the United States we are the major societies in machinery and equipment evaluation. Nevertheless, the largest number of members are the real-estate discipline members.

I suppose it can be said that value is value. Understanding value is basic. It is just a question of mechanics when you say we are applying it or dealing with it in one discipline or another. We are multidisciplinary. I think we are the only multidisciplinary society in either Canada or the United States.

10:20 a.m.

I have commented on that on page 3 at the top and mentioned the disciplines. I think it should be stated that in Ontario and most provinces property appraisal is an unregulated profession. Anyone who wishes to do so can give his opinion for a fee as to the value of a property without being a member or accredited by any professional appraisal body. In this sense, it is wide open. This is equally true of real property, personal property and intangible property.

Nevertheless, most appraisers have found it expedient to belong to at least one examining appraisal society. By "examining appraisal society," we mean a society where you must pass an examination in order to qualify. You cannot become a member unless you have been examined, both personally and in the examination room by a written examination.

I think it should be said the problems that have given rise to the present proposals respecting loan and trust corporations, have not involved nonaffiliated appraisers. There has been some affiliation among all the appraisers who are involved. In the case of the Cadillac Fairview Corp. Ltd. matter, you are only talking about fully-qualified members of one of the appraisal societies. In the case of the Seaway Mortgage Co. flips, the non-Cadillac ones, unqualified affiliated members are also involved.

Mr. Cassidy: Sorry. Unqualified affiliated members?

Mr. Beaton: Yes.

Mr. Cassidy: Are these people who are affiliated with another appraisal association but who have not passed exams?

Mr. Beaton: That is right. They cannot represent themselves as being qualified members, or fully qualified members.

Mr. Breithaupt: Either of your association or of another association?

Mr. Beaton: Of any examining society. From time to time, what I would call nonexamining associations have been formed, people who perhaps find it useful to associate together and give themselves a name as some particular kind of appraisal society, association or institute.

To put it bluntly, I am really talking about four real estate societies in Canada. I am talking about the Canadian chapters of the American Institute of Real Estate Appraisers, the Appraisal Institute of Canada, the Society of Real Estate Appraisers, and our own, the Canadian ASA Society of Appraisers. These are the examining societies.

The English society, which has chapters here, has a rule its members must belong to one of the other societies as well. So I do not mention it. I do not believe it examines in Canada, but now we are getting into an obscure detail. But basically there are four examining societies in Canada.

Then there are societies in the other disciplines. We have the Canadian Association of Business Valuators, of which I am a member. It is in a field that our society is in, as well. We find it expedient to hold collaborative events, and we do this every year. We go to their conferences and they come to ours. Some of us belong to both. Then you have appraisal disciplines that go into other fields and have other structures, and I will not belabour that.

Mr. Cassidy: Can you give us an idea of the numbers involved in these various appraisal associations dealing with real estate?

Mr. Beaton: I do not have recent figures because I have not looked them up lately, but by far the largest is the Appraisal Institute of Canada. It is quite a number of times larger than the other societies. Our society, for instance, has tended to concentrate on advanced education. We are interested in dispensing information to people who have met the basic qualifications.

The historical origins are interesting. The Appraisal Institute of Canada is basically a Winnipeg institute of prairie farm grain inspectors that has expanded into the entire country.

The Vice-Chairman: The institute will appear, as a matter of fact, before this committee.

Mr. Beaton: I would imagine.

The Vice-Chairman: That is on the 21st.

Mr. Beaton: The members will have a lot to say for themselves, as they are the largest body and they carry on the major, basic educational program.

We recognize the courses of other societies. On the other hand, we insist people either write our examinations, or have written within the past five years the examinations of a society that has the same level of difficulty as ours. If a member of the Appraisal Institute of Canada has written his examinations and has qualified within the past five years, he may join our society and become fully qualified, providing always--and we will get to this, Mr. Chairman--that he writes our ethics paper. We insist, no matter what, that they must all write our examination on ethics,

whether they have qualified in the technical papers of other societies or not.

The Society of Real Estate Appraisers started off essentially as mortgage appraisers in the United States, with Canadian chapters. They have expanded their field of technical membership into the whole of the appraisal profession and not just the mortgage segment.

The American Institute of Real Estate Appraisers is really the largest of the American institutes. They used to do quite a bit of educational work in Canada. They have withdrawn from basic education in favour of the Appraisal Institute of Canada. Then there are ourselves, and we are multidisciplinary. Each one has its own basic reasons for existing.

The Vice-Chairman: If I might just interject at that point, a number of members have indicated they wish to ask some questions. I would request if members would not mind, that they hold the questions. We will allow Mr. Beaton to finish his presentation and then we will get into the questions. Please continue, Mr. Beaton.

Mr. Beaton: As far as the Cadillac Fairview Corp. Ltd. is concerned, for instance, and its appraisers being members of another society and not ours, I should emphasize that problems of deviation from accepted standards of work and ethics can happen among any group of professionals and no body can claim any special virtue. I think that should be underlined. This is at the bottom of page three. I notice we wrote "nobody" when we really mean "no body."

We have made comments on certain things in the white paper, but we have a general comment regarding the proposals that I should recite.

We agree it would be desirable to effect changes and improvements in the law and administration of the trust and loan corporations along the lines set out in the ministry's proposals. We approve of the idea of changes.

It is our view that such a reorganization would remove much, and probably most, of the opportunity for mortgage loan appraisers to deviate from accepted standards of professional practice. There can be no excuse for lack of scruple in carrying out professional engagements, but it does help to remove the temptations. The general pattern that is proposed would certainly reduce the area of temptation very considerably.

On page five, Mr. Chairman, we have commented on the meaning of the word "value." This is a key matter in considering the Loan and Trust Corporations Act. The terms that get used in dealing with value, I suggest, are "value," "market value," "fair market value," and "mortgage value."

As I am sure you know, the term that is used in the Loan and Trust Corporations Act is "value." This is the term that appears in clause 178(1)(a). The term is not defined for the purposes of the act. It is the wide-open term "value."

I notice in the white paper the term introduced is "fair market value." I have references on page 5, paragraph 1 on page 18 and paragraph 3 on page 19. This is a term from the federal Income Tax Act. It is the term from the old death and succession duty acts. It is not defined in any of the old acts but there is a lot of jurisprudence dealing with the term.

What the term "fair market value" means goes with the interpretations that have come out of our federal and the United Kingdom courts. Some very famous definitions have appeared from time to time. We have had some quite good definitions of "fair market value," from our own federal court judges, as well. I could quote them if you wish.

The classic is the British Columbia case where the judge said, "The word 'fair' adds nothing to the term 'market value,' except to eliminate a boom, panic or distress situation." On the other hand, most of my friends who are lawyers assure me that the term "market value" also eliminates a panic or distress situation. So, we have to make what we can of that.

10:30 a.m.

"Market value" is the term employed in both the Ontario Expropriations Act and the Ontario Assessment Act. Both those acts do spell out a definition, the amount the land might be expected to realize if sold on the open market by a willing seller to a willing buyer. It is a terse definition but we feel it is a very solid one to work with day in and day out. Our experience with the definition has been extremely good since it appeared in those words about 15 years ago.

The federal Expropriation Act adopted the Ontario wording with a slight change: the amount that would have been paid for the interest if it had been sold on the open market by a willing seller to a willing buyer. I do not think the federal people wanted to adopt it on a me-too basis so they changed a couple of words. But perhaps the Ontario definition is the better one.

There is a famous definition that has run through the courses. It was used by the American Institute of Real Estate Appraisers lecturers when they were giving courses up here. The Canadian lecturers adopted it and it still is very widespread in the teaching of appraisal work in this country. The US definition is a long one and it appears on the bottom of page 5:

"The highest price estimated in terms of money which the property would bring if exposed for sale on the open market by a willing seller allowing a reasonable time to find a willing buyer, neither buyer nor seller acting under compulsion, both having full knowledge of the uses and purposes to which the property is adapted, and for which it is capable of being used and both exercising intelligent judgement." This is called the Heilbron definition, Sacramento, California, 1910.

It is not a perfect definition. It says market value is what happens when you put up a for sale sign. However, there are many categories of property, there are many situations, where a for

sale sign does not establish market value. One is downtown land assembly; another is sand and gravel pits. You could work your way out from there. The subject is interesting.

From time to time attempts have been made by appraisers to set out a more detailed definition of mortgage value, but no such definition has received anything like general acceptance. In one of the LePage reports that was provided, there is a long mortgage value definition from a book called Encyclopaedia of Appraisal Literature. It is not a generally accepted definition. It is a very hard one to live with, but I think its real limitation is that it does not have general acceptance.

It is our submission that the applicable term for purposes of the Loan and Trust Corporations Act should be "market value" and that it should be defined in the act using the Ontario definition--that is the same wording that appears in the Expropriations and Assessment Acts.

I would be glad to answer questions on that point. That is really the key to the question in our view. It should be defined and we think that is the best definition this committee could recommend.

Mr. Boudria: I would like to go back to the section on qualifications of appraisers. Are you saying that at the present time there is nothing that stops me from calling myself a consultant and appraising a building for a fee?

Mr. Beaton: Nothing at all; that is correct.

Mr. Breithaupt: There might not be many customers who would want you to do that.

Mr. Boudria: There might be a lack of customers, as my colleague from Kitchener says.

However, there is nothing that would preclude anyone saying, "I have dabbled a lot in real estate" or "I am a real estate agent"--I suppose it would be "real estate salesman" because the word "agent" is not really correct in this province--you must be either a broker or salesman. But you could do what is commonly known in real estate as a CMA. They do not call them appraisals because they do not think they are qualified to do those, but they are essentially used for the same thing in many instances. I guess CMA means "competent market analysis" or something like that. Real estate agents refer to those frequently.

Mr. Beaton: I have not looked it up lately, but yes they use that term.

Mr. Boudria: They use that term a lot.

Anyone can do that, and there is nothing, other than conflicting other information by another appraiser, that can actually say that the value placed by such a person, who is not necessarily qualified, is inaccurate. For instance, if I get one of those CMAs or appraisals from an unqualified person and from

that I deem the value of a certain property to be a certain amount, presumably it is not incorrect to assume that I can mortgage it to 75 per cent on the basis of those values, even though the qualifications may not be what they should.

Mr. Beaton: There are two points here. First of all, an opinion is only an opinion and it is worth only what it is worth, not necessarily what you pay for it. Anyone is entitled to have an opinion and, in Ontario and in all of Canada except two provinces, anyone is entitled to give this opinion and, if he can, to get a fee for doing so.

As far as the legitimacy of using that opinion is concerned, dozens and dozens of situations arise and you can discuss them at great length. I will give you the extreme situation just so you can know what we have to come back from. The extreme situation is

Mr. Justice Cattanach in the Federal Court of Canada, who says: "I do not like opinions from qualified appraisers. To me the only person who really understands value is the real estate sales agent who is holding offers in his hand day after day. I therefore do not consider appraisers to be qualified to testify as to value in my court. Give me the working broker because he is the man who knows."

Next is Mr. Justice Campbell Grant, who says, "I agree with my brother Mr. Cattanach." He goes a step farther and says, "I do not consider that the evidence of Wallace Beaton, who is not a real estate broker, can be accepted in my court." Then we go to the next person over, Mr. Justice Walsh, who says, "I have read all these opinions by my brothers, I have heard Wallace Beaton's evidence and I buy everything the man said." So right at the Federal Court, the judicial level, you have a respectful but total disagreement among the judges as to whose professional opinion is acceptable.

To go to the other extreme, somebody says to me: "I am offended by these decisions. The practising appraisers are the conscience of the appraisal profession, and if you leave the whole thing to commission agents you are going to have a situation of expediency and chaos." So you go from "the conscience of the appraisal profession" at one end to "I want the man who is holding the agreements in his hands" at the other. These are not common or uninstructed views; these are the views of some of the wisest people, the most experienced people, in dealing with these things.

Mr. Boudria: Would you not say all this arises, though, because what an appraiser is or who an appraiser is is not defined; the courts have had to make that interpretation, which, if it were quite explicit in legislation, might not have to occur at all. The only reason the courts interpret it is that there is room for interpretation.

Mr. Beaton: There are only four cases in Canada--or five; I guess there was an early railway case--that say brokers are in, appraisers are out; there are thousands of cases that speak to the opposite. But it can happen. When I talk about Justices Cattanach and Campbell Grant I am speaking of a very small minority of opinion; there are thousands and thousands of decisions that go the other way.

It really dramatizes the problem. It is possible that people who hold these opinions strongly in their mature years got their fingers burned in some client situation when they were practising law early on. What they say may be a direct result of some very uncomfortable experience they had in a client situation at an early stage. So you get opinions from qualified appraisers that may be, to put it at its lowest, highly debatable, and a highly debatable opinion can create a point of view that you will not give up for many years.

10:40 a.m.

Mr. Boudria: Can we bring this into context? You are saying that some, at least, of the appraisals that were done on some of the deals we are concerned with were made by people who were not qualified--in other words, in so far as the terms of membership in your association are concerned.

Mr. Beaton: The early Seaway flipovers.

Mr. Boudria: We are talking about such things as the London armouries type of thing and the new shopping centre and those kinds of things?

Mr. Beaton: Yes.

Mr. Boudria: They were not made by members of one of those four associations you named previously?

Mr. Beaton: They were not made by qualified or accredited members. They were people who may have been student members who may have been qualified to represent themselves as being qualified in dealing with a limited range of residential property only. You have grades of membership.

Mr. Breithaupt: Persons who may say they were qualified by their own experience.

Mr. Beaton: That is right, and who are free to do so.

Mr. Breithaupt: I was interested in looking at the variety of value meanings, and I was wondering if--following this presentation where "value," "fair market value" and "market value" are each referred to--whether there is any consensus in the ministry staff as to which is the more appropriate term to use when we actually get to the stage of legislation.

The difference is set out on page 5, but I was wondering, for example, why is "fair market value" used compared with the term "market value" that is used in other Ontario legislation? Is there any particular reason, or would you expect to opt one way or the other for a more precise definition when we actually see the projected changes in legislation that are coming ahead?

Mr. Crosbie: The best position for us to describe right now is that our mind is not closed on the definition of market value. In recent days and weeks I have been impressed with the argument in favour of market value.

You will recall the other day in committee when we discussed this, we had quite a discussion of the issue of lending value as opposed to market value. I think we will be hearing more of this from the trust company officials when they make their presentations. I think there may be a very good case for dividing the two concepts.

If market value is the one concept, then lending practices that discount market value to an appropriate amount for lending purposes is another concept.

In the white paper, there are two issues that perhaps come together which could be separated. One was the desire to reflect the concept that market value has to be true market value and, as Mr. Beaton has pointed out to us, those sort of elaborations are not necessary if appropriate appraisal techniques are being applied.

Our concern in using the term "fair market value" was an effort to reflect the range of market values that appraisers seem to be capable of recognizing.

Mr. Breithaupt: It seems much more important to define the market value term precisely since the lending value term can be easily defined as simply 75 per cent of market value.

Mr. Crosbie: A ratio, exactly.

Mr. Breithaupt: That causes no requirement for precision.

Mr. Crosbie: Up to 75 per cent. I know in early considerations I was falling into the trap of saying a property has a market value, say, of \$1 million but because of some problem with it you might not want to lend \$750,000. You do not knock down the market value to \$800,000 and take three quarters of that. You should perhaps knock the 75 per cent down to 60 per cent or some other figure.

Mr. Breithaupt: You could much better define it in those terms as far as lending value is concerned. The real precision must come in the particular definition of market value, since the other is relative to that.

Mr. Crosbie: That is the view I am personally coming towards now. It seems to me the presentations--certainly what Mr. Beaton has said this morning and some of the other papers that have been submitted--are strongly in support of that position.

Mr. Cassidy: I have a couple of questions. I want to focus on the question of value. I have a lot of questions, because I find so far your presentation is extremely stimulating and welcome.

With respect to the question of value, the word was not defined in the act. I presume it is probably a holdover from a drafting of the act in 1902 or 1911 or something like that. I note the select committee in its recommendations in that area of the

act made no recommendations for change. I assume the reason it made no recommendations in 1975 was because nobody ever thought value meant anything different to what you have referred to as market value.

Could you comment on the question of whether within your profession, in any group of appraisers--there are four societies--there is any significant deviation from the view that value in the circumstances we are talking about normally means market value?

Mr. Beaton: Over the years there have been a number of deviations, and they can be quite significant. Let us take the classic one.

In 1932, at the bottom of the Depression, it was a very difficult business to appraise property because there were a lot of dead markets. Appraisers did not know what to do, and they were writing opinions that were not based on any great amount of research, because it was not available. There was a great deal of concern about the image of the appraisal profession in the United States.

The American Institute of Real Estate Appraisers laid down a document designed to meet this particular problem and it went something like this. All properties have three kinds of value. They have value compared with other properties; they have capitalized income value; and they have the reproduction cost less depreciation value.

Every property has these three kinds of value. The duty of the appraiser is to appraise by all three methods. Then he must rationalize his three conclusions to come to a final conclusion. This is the discipline, the drill, the dogma; this is what you must do. Otherwise, you are up before the discipline committee of the American association.

The three approaches--

Mr. Cassidy: Could you name them again? One is market value--

Mr. Beaton: Direct comparison, capitalized income--

Mr. T. P. Reid: Replacement cost.

Mr. Beaton: Reproduction cost--I should say replacement cost less accumulated depreciation. Obviously, there are some properties where the latter cannot apply. On a vacant lot, there is no such thing as replacement cost less depreciation. That is a recognized exception. But these are useful appraisal devices. You cannot knock them.

If you use all three, if it should be a discipline, it may mean the appraiser, once he has finished his three appraisals, must contrive in order to bring them together. There is perhaps a temptation on the part of the appraiser to rewrite one or two of

his sections to put the three within shooting distance of each other. For some appraisers, this can be a problem.

Then you have other people who come along and say, "For an income property, these other two methods are irrelevant." This is a very strongly held view.

If you go through our case study, you will find we say, "Sure, but all appraisal methods are really direct comparison." You are comparing the income of other properties, you are comparing the sale prices of other properties and you must get your capitalization rate directly out of the market. It must be unbiased, and away we go into the detail of the appraisal discipline.

Latterly, we have had quite a vogue for discounted cash-flow analysis appraisal. It is lectured on and it is taught. The lecturers say that for income property this is the way to do it. That is getting into an area very often called summation. You have dealt with summation in the report. We will deal with it a little bit later on, so perhaps I should not anticipate what we have to say on this subject.

10:50 a.m.

You get frustrations in the appraisal field and you get vogues as a result. With each changing set of economic conditions, you have to respond to the changing market.

You also have to respond to the fact that the cupboard is bare. The rule when the cupboard is bare and there is no data is you must use what other devices the market uses.

When the cupboard is bare and a person is selling his property, what will he do? When the market is bare for comparative prices and someone is buying or selling, what would he do?

The ultimate criterion is not some dogma. It is not some technique. The ultimate criterion must be the attitudes of buyers and sellers in the market. Market value applies; people going out and bargaining with each other.

If you get so deep into your ivory tower that you forget this, you may come up with artificial values. Where is the bargaining?

We look at the case study and say, "Where is the bargaining?" Here are 18 sales that preceded the Cadillac Fairview transaction and 36 people bargained together. This has to tell us an awful lot about market, market behaviour, market prices and market yields, the whole bit. That is the sheet anchor you have when you are faced with the problems and fads in appraisal practice.

I am putting it pretty low when I use the word "fads," but it can come to this with some appraisers in some situations.

Mr. Cassidy: In the case of the Cadillac Fairview

valuations, the \$500-million valuation was got to by some means of capitalized income, was it not?

Mr. T. P. Reid: Over a 10-year period.

Mr. Beaton: Yes, it was. It follows, although not completely, the discounted cash-flow analysis notion.

Mr. Cassidy: There were also some very hefty assumptions about the ability to augment income.

Mr. Beaton: Some of us call Cadillac Fairview a Dun and Bradstreet appraisal, because perhaps what is being appraised is not so much an apartment building as the credit rating of the people who are guaranteeing the payments. What you are looking at is not what the building is worth or what the property is worth; it is what the guarantor's covenant is worth.

We are looking at where somebody is perhaps appraising a covenant. It is different from all the other buildings. They hear all the 18, but put them aside as different because, "We have a covenant here and this makes it different, so we are appraising the covenant.

That is a legitimate appraisal function. It is one you find being done, to put it lightly, in Dun and Bradstreet situations. It is really the logical domain of the business valuator. The appraisal of covenants is really the function of the business valuator.

Mr. Cassidy: Even in that case, if you were looking at it as Dun and Bradstreet they would not get a triple A.

Mr. Beaton: A Kilderkin covenant with a \$15-million reserve fund; I will not go through the discipline, but that is what they are talking about.

Mr. Cassidy: That is what I mean. There are a lot of questions--

The Vice-Chairman: If I may jump in there, Mr. Cassidy--

Mr. Cassidy: Can I come back to my original question?

The Vice-Chairman: Yes. Just for your benefit, though, prior to your coming in this morning the member for Riverdale (Mr. Renwick) was here and asked those who are officers of the court perhaps to assist me this morning in recognizing where we might be getting into an area where there is some discussion yet to be carried on at a level considerably higher than ours. I have a feeling we might be getting close to that particular thing.

Mr. Breithaupt: It may not be a higher level, but it is certainly a different one.

The Vice-Chairman: Yes. I am trying to be as flexible as I can, if you would recognize that and proceed with your questions.

Mr. Cassidy: I would like to come back to the original question. With regard to real estate valuations for mortgage purposes--I will be quite specific now--would there have been any significant amount of visible disagreement in the profession with the idea that, when value is referred to for mortgage valuation for a financial institution, what is meant is market value?

Mr. Beaton: I think so. I think there is a consensus. Let me put it this way: I think among independent public appraisers there is a consensus that the basis of valuation is market value and then the amount you apply for mortgage purposes is something which is then related to market value. It is a matter of rule, rule of thumb, policy or legislated guideline.

Mr. J. A. Taylor: Can I have a supplementary?

The Vice-Chairman: Yes.

Mr. J. A. Taylor: Mr. Beaton, in addressing the technique of discounted cash flow, you used the word "fad," I think. I do not know if that is relevant here. Could you address that in terms of determining market value for mortgage purposes?

Mr. Beaton: Make no mistake about it, discounted cash flow is where it all begins. If you take the 18 apartment buildings that were sold prior to the Cadillac closing you have 36 parties involved, 18 buyers and 18 sellers. Probably every single one, but certainly all but two or three of those people, sat down and each one did his own discounted cash-flow analysis before he went out to write his offer and to bargain with the other parties. It is the basis of investment value.

Having done their discounted cash-flow analysis, they then went out and bargained with each other. What they thought they could reasonably afford to invest and what they finally invested once they got through the bargaining process was probably different in every situation. Perhaps not. Perhaps in one situation the offer was written and accepted and that was that. Each one had done his own analysis and they overlapped, so the person who got an offer based on an analysis or a percentage of an analysis found it acceptable or expedient to go ahead.

That is the seed from which the tree grows. If the tree is market value, the seeds are seeds of discounted cash-flow analysis. You have to sell 36 to produce 18 sales to produce a market opinion. Market goes with consensus. Market is not what all 36 of those people thought. Market is about 20 of them. Throw away the top nine and the bottom nine and look at the middle 20. This is the weight of the market; this is the consensus.

Mr. Cassidy: This is a specific question and I am asking it for a purpose. In the case of the valuation of the mortgages that were extended by Crown Trust on the Daon development in Vancouver, is there any way an independent public appraiser would normally be able to arrive at an evaluation in a situation like that within a period of a couple of days?

The Vice-Chairman: Mr. Cassidy, not being of a legal

mind, but having a concern here, with respect, I think we are now getting into the area of what is before the courts at present.

Mr. Cassidy: Let me rephrase the question. If you have a major commercial mortgage evaluation situation, particularly with subordinated mortgage securities, is it possible to arrive at an evaluation within a period of two or three days?

Mr. Beaton: Let me go to the background of that kind of question. First of all, it is a projected appraisal; it is not the appraisal of an existing property, but the appraisal of a soon-to-be-existing property. In a sense, it is a bit like a prospectus appraisal; it has this characteristic.

In some of the major cities in the United States they will not accept cost as a measure. The insurance companies say, "When the building is all finished, there must be an appraisal before we finally commit ourselves to this mortgage loan." If the appraisal shows a deficiency, they come back to the investors and say: "We are sorry. These are what the appraisals show. You are going to have to put up more equity money because of the appraisal situation."

That is the extreme case. We do not have this in Canada, but in Philadelphia and Baltimore, that is what they have. There is no question about it. The big insurance companies have this protection and this final step and they are appraising on the basis of projected cash flow.

11 a.m.

From an orthodox standpoint, the best way to appraise a property that is not yet completed is by the methods available, of which there are two. There is the cost, and because there is no depreciation yet, you do not have to go through the hazard of estimating depreciation. Cost is a measure of value, particularly if someone would bind himself to it and particularly if those costs are not out of line with other people's costs. The comparison is cost cross-checked against other costs. Otherwise, it is not market value. If you examine the cost on a single contract--one swallow does not make a summer--you do not have market value. There is this cross-check.

To deal with your question, what you have is this. Inside some appraisers' offices, they have all this information because they are doing it all the time. They are highly geared and well organized to do it. In other offices, they have to go out into the market and seek the information they are lacking. In some situations, some people can do it very quickly indeed. But you cannot make a generalization on this point.

Mr. Cassidy: What I am hearing you say is that in a situation like that, particularly in a remote city some thousands of miles away, there are obstacles. It is not as easy as arriving at an evaluation of a 150-apartment block at Bathurst and Finch which you could do relatively quickly on the basis of information you probably have in your office.

Mr. Beaton: That is a generalization. There are quite a few exceptions on each of these two points. It depends on how you are organized, what your partners have been doing lately and things of this kind.

Mr. Cassidy: My other question relates to this. In the flips that were taking place and the trading of buildings within the Seaway group--

The Acting Chairman (Mr. MacQuarrie): Mr. Cassidy, with respect, your question might be leading to areas the chairman has already--

Mr. Cassidy: I am sorry. I am getting a bit tired of the fact that every time I ask a question I have to wait until it is vetted by the chairman. Perhaps you would allow me to put the question forward first before interfering.

The Acting Chairman: I am exercising the Chairman's prerogative, in this instance, requiring a certain amount of--

Mr. Cassidy: I will ask my question, and then you can judge it.

The Acting Chairman: When you are referring to specific instances and specific situations and asking opinions on them, that was something that at the outset of the committee--

Mr. Cassidy: Fine. I will rephrase my question to get an answer.

The Acting Chairman: All right. Rephrase your question.

Mr. Cassidy: I have not asked it yet.

The Acting Chairman: When you start talking about Seaway and the rest of it, it began to--

Mr. Cassidy: With great respect, you may have experience from your past in dealing with properties and that kind of thing, but this is a difficult area for all members of the committee. If we try and anchor ourselves to some factual situations, it makes it easier to explain what we are talking about. This is why we are here in the first place. We would not have been here if it had not been for the screw-up that took place.

The Acting Chairman: I would not say exactly that.

Mr. Cassidy: Mr. Beaton, forgive me. This is not between you and me. It is within the committee, as I am sure you appreciate.

In the case of the flips that took place, there was a rapid running up of the value of commercial properties, in some cases from less than \$1 million to \$6 million or \$7 million in the course of two or three years. In the first place, were there similar events taking place between 1979 and 1983 in the commercial building market in general which would lead one to

accept this was a possible thing to happen and not be too suspicious of it if you happened to see it taking place?

Mr. Beaton: I do not want to make a lot of generalizations, if you do not mind, about the real estate market. People say about an appraiser, "This man really knows the market." All he knows is the market for the kind of property he is appraising this week because his mind is concentrating on it and he is dealing with all the things that affect that. But as far as anybody going around having the greatest knowledge of the market generally is concerned, it does not happen.

We have periods of well-defined escalation. We have periods where there are conflicting changes. We had the credit freeze in one period and the market dived for many kinds of properties in many places. Yet in some places those kinds of properties had very active markets. There are exceptions to every rule.

The appraiser who makes generalizations may become a captive of his own view very quickly. You have to say, "I know there was this general condition, and interest rates were doing this and mortgages volumes were doing that," and the other things you may look up to get an overview.

But this has been a much more difficult market to live with in the 1979-82 period--which I think is what the question really is. It used to be that no matter what you invested in you did pretty well. Some people invested more shrewdly than others. I remember a complaint by a leading planner: "The trouble with this world is that the stupidest guys are making all the money--because they cannot get any action. The market goes up and they are stuck with a property that is worth far more than anybody else's."

But that does not happen any more. Today it is a market that requires a lot more perception.

The Acting Chairman: I found your answer a lot more circumspect than the questioner intended it to be. Mr. Cassidy, I would direct your attention to clause 19(d)7 which--

Interjections.

The Acting Chairman: I thought you saw me looking at the standing orders.

This clause indicates that no member shall refer to any matter that is the subject of a proceeding that is pending in a court or is before a judge for judicial determination. When you get into some of the areas you were attempting to get into, I thought you were treading a little along that line. I just ask you to bear that in mind.

Mr. Cassidy: I have been bearing it in mind very heavily.

The Acting Chairman: Does anyone have any other questions--

Mr. Cassidy: I just have one more question. Supposing

one were a regulator and saw a rapid running up of values of particular properties. Is there a way that someone external to the process can, with relative ease, get a feel as to whether the valuations taking place in those cases are likely to reflect market value or not?

Mr. Beaton: There are two basic ways to deal with whether the valuation is reasonable. The first is to take the valuation to another evaluator and say, "I would like an opinion on this opinion." This is a consulting function that an appraiser performs all the time. A great many of us get reports for review from time to time. Sometimes I get a phone call followed by a pile of 20 reports in my mail. They ask me to scan them and make any general observations that occur to me.

The review appraisal function is a very important one. It is a function that is performed, for instance, by property departments of government. Appraisals are not always the easiest books in the world to read. Simplifying takes twice as long. Some people do not do this as well as others. They write their opinion but it is quite prosaic. On the other hand it may involve matters that are technical, and you say, "I should have another appraiser express an opinion." Government does this. So do individuals.

The other alternative, if you do not take both, is to call for another appraisal and see what another appraiser's report says. You put the two side by side and say: "This man says this for this reason. That man says that for those reasons, and this one makes more sense to me than that"--or you do whatever you do. These are the two ways.

Beyond this, all men who walk the face of this earth, almost without exception, are experts on three subjects--motor cars, the stock market and real estate. Perhaps there are a few distinctive exceptions. The people at this table, for instance, are only experts on real estate. They are not very good at motor cars or the stock market. I am describing human nature. I am not describing the condition of the world.

Mr. T. P. Reid: In your book, of the 36 properties that were sold is there an indication of how much they were sold for per apartment unit?

Mr. Beaton: Yes.

Mr. T. P. Reid: Could you tell us what that was?

11:10 a.m.

Mr. Beaton: The figure is there. It is not a very important figure because, of course, the mixture in apartments varies from one figure to another: one bedroom, two bedrooms, bachelors and so on. Price per unit, simple average, \$24,700; weighted average, \$27,915; median sale, \$26,544. So it is anything from \$24,700 to \$27,915, depending on which kind of mathematics interests you.

Mr. T. P. Reid: Obviously, you would not have the

discounted capital or cash flows on those as well, what kind of interest they were going to project.

Mr. Beaton: We have the overall rate of return, which means before depreciation. The average overall rate of return is 6.62 per cent; the median is 7.18 per cent; the total or weighted average overall rate of return is 6.12 per cent.

Mr. T. P. Reid: The chairman may pull me up here but, as I recall in the Cadillac Fairview instance, in the \$270 million, the apartments went for, I believe, somewhere around \$26,000 apiece, did they not?

The Vice-Chairman: I will in fact, Mr. Reid.

Mr. T. P. Reid: That is certainly a matter of just the numbers.

The Vice-Chairman: Yes, but I think we are getting into that black and white area that--well, you can place a question, but I stand prepared, if necessary, to--

Mr. T. P. Reid: I do not know how I can avoid the comparison. Maybe I will make a comment, and you can lift your left eyebrow a tiny fraction so the chairman will not see it. It seems to me that at \$270 million--and I am just talking ball-park figures, okay?--that was generally what the Cadillac Fairview went for in those ball-park figures.

Mr. Beaton: Whatever everybody says, it was less, because there was a commercial component in there, too. You first take out the commercial component, then you do your division and then you have a price per unit for what it is worth. I have not refreshed my memory on the price lately, but whatever it is, it is less.

Mr. T. P. Reid: What do you mean by "commercial component"?

Mr. Beaton: There are buildings with large store complexes and so on on the ground floor. At 77 St. Clair East almost half the property is commercial and not apartments at all.

Mr. T. P. Reid: But the background of that was that Cadillac Fairview wanted to sell, so we get back to the willing seller.

Mr. Beaton: The background from an appraisal standpoint is that they declared publicly that they wanted to sell, so this was the knowledge in which the market was doing business with them.

Mr. T. P. Reid: And the rate of return was 6.62 per cent, again as an average, on the 36--

Mr. Beaton: On those apartments, the overall rate of return on the 18 apartments, 36 buyers and sellers.

Hon. Mr. Elgie: That is in this book.

Mr. T. P. Reid: Yes, I realize that. Again, that seems to be in the ball park.

Can you tell us, then, when you did your appraisal and you came up with \$330 million, roughly, you took in the commercial components and all the rest of it?

Mr. Beaton: Yes.

Mr. T. P. Reid: Did you do your cash discounting or capital discounting on a 10-year basis or on a five-year basis?

Mr. Beaton: No, the approach was quite crude. We say: "Here are 18 deals that have been made, and all of these people have contemplated the future for us. Who are we to contemplate the future? The buyers have contemplated the future; the sellers have contemplated the future." They say, "Taking what we find here now and all the futures, we see a yield of so much operating overall rate of return, a yield of so much gross income." On a gross basis you get another figure as well.

Mr. T. P. Reid: Is that on the life of the property or on five years?

Mr. Beaton: No, we are appraising the attitudes of buyers and sellers. I have not interviewed 18 buyers and 18 sellers. I say: "I know two things. I know this is the income the property got during the year before it was sold, and this is the price they paid to get that income and all the future adjustments of it, including their chances with the rent control people and everything else." So all their bets--and buying a property is a bet on the future--add up to a current gross yield of this figure and a current net overall rate of return of that figure. These are two ways of looking at it. You can go for a just price per apartment as well, but you are really doing the same exercise following a different route.

Mr. T. P. Reid: So the possibility of rent control, the possible inflation rate, and the possible interest rate are all numbers that would come into the appraisal for each one of these outfits, and it is everybody's best guess.

Mr. Beaton: Not everybody's, but the best guess, if you want to use the term, of those people who are putting their money where their minds are, the buyers and sellers. The sellers are putting up their property and they are making their judgements. So these are the best guesses of the people who are putting their money where their minds are, and these are the only guesses we are allowed to consider, because these are market guesses.

The opinion of a man who is not parting with his property may or may not be valid.

Mr. T. P. Reid: I guess what we are getting at is, to a large extent, it is more an art than a science.

Mr. Beaton: Very often, yes. If you have a data model to

compare with the one that existed in this area during the 18 months preceding the Cadillac Fairview Corp. Ltd. sale, there is not very much room left for art. These people are all speaking and speaking eloquently.

In appraising that data model, the appraiser is almost a mechanic. He really has no room for judgement. If he says, "The market is telling me this. All I have to do is listen," it is almost an exercise in mechanics. It is the extreme end of the appraisal thing, the totally useful data situation.

You have to ponder a couple of contradictions in there. But except for the contradictions, the market spoke very eloquently during that period. In our view, all the appraiser has to do is listen.

Mr. T. P. Reid: So, based on that, you are telling us the value, based on what had happened in the market previously, was \$330 million?

Mr. Beaton: Yes.

The Vice-Chairman: Thank you. Are there any other questions at this point? Would you then, Mr. Beaton, like to continue with your presentation?

Mr. Beaton: Yes. We have come a short distance away, Mr. Chairman, from market value, which was our topic. But if you turn to page 7 we have some things to say to you about the question of prudent lending standards.

This term is used in the white paper. I think it says it tersely. We should say to you, when you talk about prudent lending standards you are talking about, to quote the white paper, the "likely realizeable value of real property on the open market under circumstances that might require foreclosure or forced sale." If there is a forced sale the mortgage should deliver 100 cents on the dollar of the amount of the mortgage.

There is no objective measure for this, and this is what we said in our first paragraph. If you want to find a forced sale or foreclosure value, there is no way of going out and looking at 100 other forced sales and foreclosures and coming up with a value because they rarely occur. It is the same kind of property in the same place at the same time. You do not get enough comparisons to find a foreclosure or distress market.

What you have to do is consider what measure you apply to market value. These are the comments we heard earlier when Mr. Breithaupt was posing his question. These comments are valid.

The measure at present used in the Loan and Trust Corporations Act, stated in clause 178(1)(a), is "three quarters of the value of the real estate." In our view, this is reasonable provided the value is market value as this term is defined in the other provincial acts and also provided the market value is appraised by comparison with other reasonably similar transactions, or the yields from other reasonably similar transactions in a reasonably active market.

11:20 a.m.

In other words, we are taking this question of prudent lending standards and we are trying to divide it into two. Where there is no reasonably active market, or where the property is a one-of-a-kind type or a few-of-a-kind type, it may be advisable to apply a more conservative measure to market value in order to derive the likely realizeable foreclosure or forced sale value.

There is market value on an active market and there is market value on an inactive market. Obviously, the second kind of value requires a greater degree of prudence in applying a prudent lending standard. We make this distinction.

The essential point is that, while market value is an objective measure of the worth of something, there is no reliable measure for distress value. The measure of the difference will always be subjective, a matter of personal opinion supported by little evidence. We have an objective measure called market value and then we have a subjective measure, which is the difference.

How much do we knock off to bring market value down to prudent lending value, to prudent lending standard? Twenty-five per cent would appear to be quite reasonable where the market is active. But there are some unusual properties around, one-of-a-kind properties. If you appraise a property which is used for a reasonably sophisticated chemical manufacturing operation, nobody can use it for anything else, so 75 per cent may not be the best measure to apply in that situation.

You are getting into the health of the industry and a lot of other factors that go to business valuation as opposed to real estate valuation, per se. We make the distinction and we urge that you keep this in view.

Rules respecting appraisals: The recommendation in the second paragraph of page 29 of the white paper is that rules be established by each loan and trust corporation respecting appraisals and appraisal standards.

In our view, this could do a great deal to overcome the type of appraisal problem encountered recently. There are no details in the white paper, but we cite four examples which might be helpful to you. These could usefully deal with the appointment of appraisers and with the acceptable methods of appraisal for mortgage loan purposes.

Our first suggestion is there should be no discrimination in the employment of qualified appraisers as between the members of one appraisal body and those of another. Sometimes we find public authorities establishing rules. They say, "All appraisals must be done by," and then they name one appraisal institute without naming the other three examining bodies. This is a sort of discrimination which appears, perhaps inadvertently, from time to time. We mention this point in passing.

I did a seminar for a government body recently--not a provincial one--and I kidded them a little that they had this rule

and that I presumed they were going to get rid of it because they were calling us in to do seminars for them.

The second point is that student or associate members of recognized bodies should not be retained to perform loan and trust company appraisals which are beyond their competence or qualifications. Now we are getting down to more specific regulation and I think that is important. The underqualified appraiser can be a public menace. Particularly with loan and trust companies, some specific regulation in this area would be highly desirable.

The third point is we suggest consideration be given to the advisability of retaining several appraisers for the assignments of each corporation. I do not mean several appraisers should appraise each property, but it is a useful thing for a mortgage, loan or trust company not to be putting all its appraisals into one particular office, into the hands of one particular appraiser. There should be some leavening of the process by having several appraisers.

There is a sort of precedent for this. After the Home Bank scandal of 1921 or 1922, chartered banks were required to have two auditors instead of one. They recognized there was a need for some sort of cross-checking, leavening or whatever in the process. We make this suggestion to you.

When an appraiser derives too large a portion of his engagements from a single client source, he can become vulnerable to that client's suggestions, and this can result sometimes in client-dictated values. From the standpoint of the corporation, receiving appraisal reports from different appraisers respecting different properties tends to provide some perspective on the market, on valuation and on the quality of available professional workmanship.

Mr. MacQuarrie: Mr. Beaton, I certainly appreciate the suggestion you are putting forward here, that a trust or loan company farm out its appraisal work to a variety of appraisers for the reasons you have stated. But in a number of instances I can recall, some of the major trust companies have their own captive appraisers on staff, who are, in most cases, duly accredited by one or another of the bodies.

Do you think this is a wise policy? It is the same as corporate legal departments and other areas of other professions where they have their own corporate capacity, if you will.

Mr. Breithaupt: Perhaps you could also discuss whether it should be a matter of the total size of a project, just as insurance companies have their own in-house appraisers to settle things up to certain values, or the lawyers in an insurance company deal with many of the routine things. Often there will be others involved at the higher values.

Is that an approach that balances up the themes Mr. MacQuarrie is raising?

Mr. Beaton: The point is an important one. We have not addressed ourselves directly to that in our submission. Each company will obviously want to establish rules for when it must have appraisals. What we are saying here goes beyond that. When you get appraisals, diversifying your assignments is a healthy thing. In this area, there are quite a number of very interesting practices you may hear about from the trust and loan companies themselves on their policies in dealing with these matters.

My own work does not go very heavily into mortgage appraisal work; other members of the society do a lot more of that than I do. One of them tells me there is one company that takes a chunk of its portfolio which is unappraised by its in-house appraising staff. They say, "We want you to pick 10 properties at random and do your own appraisal, and we will get them in and use them as a cross-check."

This is a very healthy process. You can see there is some enlightened management doing this. They are not interested in buying a huge pile of appraisal work, which is essentially only informative. It is not productive, only informative. So they run this test check. I suppose it is the same kind of thing the audit committee does in the corporation in its deliberations. So test checks are one thing, and certainly the notion that properties beyond a certain price must be appraised.

Perhaps I can go back to my friends in the United States. They have far heavier rules regarding independent appraisal in the American insurance loan and trust companies than we have here.

Mr. Breithaupt: When you say "far heavier rules," you mean rules favouring the requirement of doing it.

Mr. Beaton: Calling for more independent public appraisals. In the field of office buildings, for example; I was a little staggered the first time I was exposed to the amount of work they do with new office buildings. It caught me by surprise. There is no comparable work volume here.

The policies down there have grown on the basis of practice and expediency, on the needs as they have been perceived, and on the problems that have occurred from time to time.

11:30 a.m.

No one should be doing any more work than he really needs to do, but the problem is perceiving exactly how much is needed. There is a discretionary element here that management must decide. I do not think we would like to suggest any rules for management in laying down the amount of independent public appraising that might be helpful, useful or mandatory.

Mr. Cassidy: What you are saying then is, for example, it would be quite normal for a trust company with a lot of residential mortgages to do a lot of appraisals in-house. It is relatively straightforward and is routine and a lot cheaper.

What you are suggesting is if standards are laid down by the

registrar, or internally within the company, they might include a certain review function by outside appraisers in order to keep the internal procedure on the rails.

Mr. Beaton: The notion of test checks is very good, but how do you write the formula? I would think you would be better with a dozen loan and trust company managers discussing the question of test checks and how much they are really needed rather than to get us. For all that we are inside companies working for them, we are still outside the companies in terms of the policies that call for us being retained professionally.

The Vice-Chairman: Mr. Breithaupt, at the same time as recognizing you and to make sure that we finish the brief this morning, may I ask if you could perhaps keep your questions short and then we could have any other questions once Mr. Beaton has completed the last two or three pages of his brief.

Mr. Cassidy: I would be happy for him to go on to the end.

Mr. Breithaupt: I just want to clear up one point with the registrar, Mr. Thompson, or with Mr. Crosbie.

Looking at page 29 and the reference with respect to the rules respecting appraisals, can you tell me whether at the moment there are any guidelines that are expected of the various loan and trust companies in this area, or has this been left entirely to a usual management responsibility and function?

Mr. Thompson: I could say that it is really up to the individual company as to the process it uses, and that is subject to our review. What we are really talking about in the white paper, or what we are advancing, is the need to have a uniform standard across the industry--more or less the concept of a uniform playing field that everybody knows as an accepted standard.

Mr. Breithaupt: At least that could be the basic rule. Obviously, some corporations could have much more intricate requirements.

Mr. Thompson: Yes, much more stringent, etc., but we would want a common standard that we would hope would deal with the great majority of matters. Whether that is developed by the registrar or developed by the industry and approved by the registrar really awaits to be seen. I am sure the trust companies would prefer the latter. There has been some amount of considerable work done in that area.

Mr. Beaton: There is a fourth point which I would like to refer to, on the bottom part of page 8.

On page 29 of the white paper, paragraph 2(b), there is a statement that real estate subject to a mortgage should be valued and appraised on a gross basis without regard to the mortgage, rather than on an equity basis. We agree with this.

There is a technical reason that might be of some interest

to you. When you appraise a property, you really do not know what the value of the property is. What you know is it is worth somewhere between a number and another number. Nobody can say it is worth exactly \$10,253,000.25.

An appraisal, in a sense, is a range of values. When you go appraising the equity, you are widening the range. You can very easily get into a wider margin for error. There are some very interesting technical examples of this that have run through the Land Compensation Board for instance--very sophisticated stuff.

The members of the Land Compensation Board do not know exactly why they are uncomfortable, but they know they are uncomfortable and they reject it. They are right, because the range of margin for error, to put it at its lowest, or the range of values at its highest, is considerably greater when you take an equity approach.

This is one of a number of things that come under the general heading of summation; that is, appraising pieces of a property and adding them together. If you appraise the house and then the land, which is the cost approach, you are adding the two together and this may not be the true value.

The adding of two values together does not necessarily tell the story. The classic example is one glove is not worth half the price of a pair. You cannot appraise each glove, add them together, and say that is what a pair of gloves is worth.

The same thing happens here. If you appraise the equity and then add the mortgage, you may not necessarily get the most reliable value for the property. At the extreme, you can say if you do, it is a coincidence. It is not as bad as that, but it is not the best way to appraise property. It also provides hazards for the less sophisticated appraiser. We agree with this notion and we would like to say so.

I come to the question of the accountability of appraisers. "To prevent the recurrence of recently discovered abuses" there will have to be "an increased awareness of their responsibilities by valuers." Page 10, column 2, paragraph 1.

The client who commissions an appraisal report is buying, in effect, a body of information, a quality of judgement and a standard of ethics. These are his responsibility areas. The information implies adequate and relevant research. Whether it is already in house or whether he has to go out and do it and it takes more time, this is implied. The judgement implies competence and detachment. The ethics imply fiduciary responsibility, both to third parties and to the public. All three elements imply a lack of bias.

In discharging their duty to prepare competent, diligent and unbiased evaluations, appraisers are accountable initially to their clients but ultimately to the profession and to the law. Members of our society are bound by a code of ethics which deals with this responsibility under paragraph 3.6, "Appraiser's

fiduciary relationship to third parties." Perhaps I will pass that out and read the second one, which is somewhat similar.

Paragraph 3(7): "Appraiser's fiduciary relationship to the public: Since the general public welfare is often involved in the execution of valuation assignments, the appraiser has an obligation and responsibility to the general public that supersedes the appraiser's obligation to his client. This fiduciary relationship to the public is the same as his fiduciary relationship to third parties (3.6). It applies to assignments involving depositors in a financial institution making loans," etc.

Those words have been in our code of ethics for a good many years and they happen to apply specifically to the matters that have given rise to some of these deliberations. We have included the complete text of our code of ethics as appendix 2 of our submission, because the code of ethics question is raised specifically in the white paper.

The white paper proposes that the "governing bodies of the various professional associations concerned should be invited to consider...the changes which they propose to make in the codes of ethics that govern their members to prevent the involvement or participation of those members in conflict of interest situations."

We feel we may have gone straight to this point already in our rule regarding the appraiser's fiduciary relationship to the public. I am not sure if it is in other codes. I have not done a run of all the codes of ethics. That rule goes directly to the question raised in the white paper. I urge you to keep those words in mind if you are considering the ethical problem that exists.

11:40 a.m.

It is possible our society has anticipated the need for changes of this kind because of the fiduciary relationship and responsibility clauses already quoted. Nevertheless, we remain ready and willing to advise and co-operate with the government to ensure that all appraisers are governed by codes of conduct and ethics sufficient to prevent their involvement or participation in conflict of interest situations.

There is also a recommendation in the white paper that in addition to being subject to discipline by their professional associations, external advisers, including appraisers, should be made legally accountable. That has a number of meanings. I am not a lawyer and do not want to speak to it in any great depth. My impression is that we are already legally accountable. However, there are levels or degrees of legal accountability and some specific enlargements may be contemplated. But we agree with the principle that appraisers should be legally accountable.

Those are our suggestions and concerns, and we hope they will be helpful to the committee.

Mr. Boudria: Mr. Chairman, in the book *Trust: The Greymac Affair* by Terrance Belford, he described on page 80 the valuation of the London armouries: "This appraisal was an unusual

exercise in foresight." He described how the property was valued pretending there was an inn instead of the London armouries on the site. In your opinion, if for the purposes of mortgages it was compulsory to have an accredited appraiser, what would the chances be of getting those kinds of things going on?

That is not the only one. Earlier this morning we referred to the Rivière du Loup shopping centre and there was another one in Kitchener or somewhere in which there were similar unusual exercises in foresight. I am asking only for an opinion. Do you think those kinds of things would have happened had professional accredited appraisers been used in all those instances?

Mr. MacQuarrie: You are asking for speculative opinions with respect to situations that have not been fully amplified and also situations that are coming particularly close to legal proceedings. I raise the question whether that line of questioning is proper.

Mr. Boudria: All right. I will word that differently.

The Vice-Chairman: Mr. MacQuarrie has a valid point. Perhaps you might reword it. I will see if I can entertain the reworded question.

Mr. Boudria: Okay, I will try it one more time: Is it your opinion that valuations would be much better, generally speaking, if they were done by accredited appraisers such as your society represents?

Mr. Beaton: I think so, yes. That is not the whole answer, but certainly it is part of it.

Mr. Boudria: So it answers the exact point of my question. Are you of the opinion then that mortgages should always be appraised by accredited appraisers? Would that involve a problem?

Mr. Beaton: Let us face it, when you get into modest homes you are dealing in production-line appraising. The qualifications to be a basic residential mortgage appraiser are far less than those of the comprehensive man-of-all-appraisal-trades. That is whom we are accrediting when we have them write the real estate examination.

I find myself a little betwixt and between here because the word appraisal can be used very loosely. There is an appraisal which is the estimate of the value of inadequately described property. If the property does not exist yet then you may be doing a feasibility study with financial conclusions and not an appraisal. To call that an appraisal is perhaps a misnomer.

The problems you have when you get into this area are the same as the problems chartered accountants have when they start doing income projections in prospectuses, which they are not allowed to do any more.

I am a chartered accountant and a business valuator from day

one. Chartered accountants used to give their opinions on income projections in prospectuses. Then there was a very bad prospectus; I guess there were several of them and this disappeared. Some of us have lived in the shadow of the last prospectuses in the process of getting our accounting education.

The principle is the same. If it is a prospectus, it should be labelled as such. If it is a feasibility study, it should be labelled as such. It comes down to this larger question. It does not matter whether you are a qualified appraiser. If you have no experience with a particular kind of property, you have no business appraising it; absolutely none.

Highly qualified appraisers have called their fellow practitioners from time to time and said: "Somebody is asking me to appraise a major downtown redevelopment assembly and I have never done it before. Would you let me associate myself with you for the purposes of this project? We will do it together. You will charge your fee. If there is any more in it, I will take the difference. I want the experience because I do not wish to do my first appraisal myself."

It is set out in our principles of practice. We urge qualified appraisers to associate themselves with people doing something for the first time. They do it together and then he has the experience. I have an ethical duty to my fellow practitioner to say yes when he asks me. Otherwise, the public interest is not being served the way it should be.

Mr. Boudria: You are a member of a society that has such a code of ethics. You would contact one of your colleagues to associate yourself in that way to ensure your work is done in as professional a way as possible. Someone who is not accredited by any society presumably would not have the same obligations. Morally, everybody should but you cannot lose an accreditation you do not have.

Mr. Beaton: You can block yourself from getting one, mind you.

Mr. Boudria: Yes. Presumably, if you intend to do only a limited number of appraisals in the near future for a large amount of money, you may not be too concerned about--

Mr. Beaton: All people have different reasons.

Mr. Boudria: That is what I am getting at. Would you think that appraisals beyond a certain amount should be done only by accredited appraisers? Should there be a ceiling at which these in-house, nonaccredited--

Mr. Beaton: I do not have a specific view on this. These are policy questions. I do not think we should have a view on this. We should say: "We are here to serve. It is for somebody else to decide when we should be serving."

Mr. Breithaupt: I was interested in the comment Mr. Beaton made about one glove not being worth what a pair is worth.

I suppose that is true except if you happen to have only one hand. Then one glove is worth the pair because the other one is going to be thrown away.

Hon. Mr. Elgie: It depends on whether it is the right or left glove.

Mr. Breithaupt: It makes me wonder, when you look at the ethical circumstances, how you deal with those who do not happen to be members of any of the four organizations that have these standards.

11:50 a.m.

For example, if you take the view of the one-handed person to whom one glove is all that is required and the other is disposable, the whole basis upon which your traditional values and the ethics you have developed may well be ignored by that person. Since anyone can give an appraisal, or an opinion at least, how do you propose to deal with the persons who do not happen to be members of organizations and at least accept or acknowledge the ethical requirements as part of their particular or peculiar qualifications.

If Mr. X or Mr. Y or Mrs. Z chooses to give values and has no particular interest in your way of doing things, then the ethical patterns are of very little consequence unless you are going to require that everyone giving an opinion be a member of a society with disciplinary sanctions; or, if it is over \$1 million in value or whatever, that this kind of requirement be imposed by the registrar on the trust companies; or that the trust companies together agree that they will use a person qualified in certain particulars to do this task. How are you going to deal with the person who is not going to play by your rules unless a certain compulsion comes into all this?

Mr. Beaton: I think you have two questions here side by side. The first is, how do we deal with it in the context of the trust and loan companies; the other is, how do we deal with the problem generally.

Within the context of the trust and loan companies it is a matter of whatever rules and regulations the trust companies write, if this proposal is accepted, that are then reviewed by the registrar and in effect endorsed; then it is the policy rules they write in dealing with this particular problem.

On the other hand, there is the larger question that this is happening all the time all over the place; and it does happen and it is a problem. It is not a problem that surfaces once a year; it is a problem that occurs with greater frequency than that. I do not know what the frequency is, because none of us gets all the problems of unqualified appraisals put in front of us. One person sees a few and another person sees a few.

I think the ultimate answer to that is probably something akin to the registrar of public accountancy law that we have in Ontario. You cannot say that everybody who is going to offer

services as a public accountant must be a chartered accountant; you have a disparate number of societies. So you have a regulatory body of some kind, and with appraisals it may well have to come to that.

Mr. Breithaupt: The other theme I was interested in was the proposal you referred to briefly on page 11, the matter of being made legally accountable. I do not know what this means beyond the usual requirements that, if you give an opinion for value and are negligent in doing so, an action may well lie against you for that negligence and you may or may not have insurance coverage to deal with errors and omissions.

I have a two-part question, then. First, is it usual for members of your associations to have an errors and omissions insurance circumstance? Second, what value would there be in underlining the clear responsibility that already exists by referring to it again in some other statute?

Mr. Beaton: To take the first question, there have been a number of attempts by the appraisal societies to develop errors and omissions policies for their members generally. There have been a lot of problems in doing this because different firms have widely differing practice complexes, different mixtures of work and responsibility and that sort of thing. It is very hard to write a policy. A policy that gets written is too good for some people and too expensive for others.

There are a number of different hazards. I am not sure anybody can be protected against his own lack of scruple or ethics or even competence. On the other hand, you need protection against your juniors whom you have faith in letting you down. So where you have an organization you really do need that kind of thing. Where you do not--some of us are independent public appraisers, who, when we need to have a major assignment dealt with, we associate ourselves with other appraisers on an ad hoc basis. We put together a team or task force to take on the big assignments.

Mr. Breithaupt: Would insurance coverage be obtained for that particular event on some occasions?

Mr. Beaton: Sometimes we will take out task force insurance to protect you against the input of the other members of the force. That happens occasionally. I cannot speak for everybody because different people are doing different work and appraisals.

Mr. Breithaupt: But it is routinely available.

Mr. Beaton: It is available and you work it out according to the need. You weigh it and I am sure you pay a bit too much for it, but if you need it, there it is. There is no easy answer in that area.

Mr. Breithaupt: All right, then going ahead further into the legally accountable matter, if insurance may or may not be available either to the individual practitioner or to a larger firm or to a team for a project, what particular additional

protections would be available that would make this term "legally accountable" mean anything?

Mr. Beaton: If it is fraud, you get thrown in jail. There is a criminal element that can creep in. There is some point at which you have crossed the line of ethics and gone into the area of crime which, again, is a matter of legal understanding and definition. Perhaps I am not a very good person to talk to in this area. I feel if you do everything right you are not going to have any problems.

Mr. Breithaupt: Even in politics that is true on occasion. I have gathered that this phrase does not bring any magic to what is already there, whether it is a criminal matter, a contract matter, a matter of professional responsibility or they are matters covered otherwise perhaps by an errors or omissions insurance policy.

Mr. Beaton: Perhaps I could add one thing: A great many appraisers are very much servants of the adversary system which is practised in our courts. We get called as witnesses far more often than members of almost any other profession; that is, man for man on the average. We put in a lot of track time in the courts. I have been on--I cannot count the cases--certainly well in excess of 100 substantial cases. Some of us should feel very much a sense of the law being there, not exactly watching you but there if you are not watching yourself. A lot of appraisers have the burden of their responsibility dramatized for them because of the very fact they are putting in a lot of time in court and with lawyers.

Mr. Breithaupt: I would go back to the registrar and ask Mr. Thompson: What is the legally accountable principle being sought that is not there in the usual experience?

Mr. Thompson: As you know, there is quite a body of law with the role of the consultant on it. In advancing this proposition, the remedy by way of negligence would be basically by the party agreed, that is, the person in a contractual relationship. What we are really propounding here is whether or not there should be some extension of that principle where there is a lending or financing type of institution.

12 noon

Mr. Breithaupt: But if it is still based on contract that Beaton is hired to provide a certain service and a foot-thick pile of various calculations, the top page of which also happens to be an account, I still do not understand what more you are seeking to underline when you talk about "legally accountable." It is as though some peculiar responsibility now sought to be imposed does not already exist.

If all you are doing by this is reinforcing what is already there, that is fine, but I do not see it as being worth anything more than an acknowledgement and reminder of what exists, unless I am missing something.

Hon. Mr. Elgie: May I interject, Mr. Chairman? I think

Mr. Beaton raised several important points. One was on page 10, about fiduciary relationship to the public.

I am not sure all members of the appraisal institutes, or whatever name they have, agree there is a fiduciary relationship to third parties when financial institutions are making loans, for example. If so, then that is a new principle, or it is a principle Mr. Thompson is talking about, that obligation to the public.

Second, there have been some cases dealing with the obligations of professionals. I am thinking of the Revelstoke case out in British Columbia, which you will probably be aware of, although it is not related to your particular profession. The judge said in that case the particular profession was not expected to be a bloodhound, but it was at least expected to be a watchdog.

Maybe that is the sort of thing we are talking about here. It is to increase--

Mr. Breithaupt: To underline this theme then, it gives an opportunity to the courts to make an observation, apart from the professional discipline that might separately flow.

Mr. Cassidy: I have a number of questions. I want to thank you, Mr. Beaton, for an excellent presentation. I think we have all found it very helpful and useful, perhaps reassuring as well, in the light of some of the events that took place a year or two ago.

In the introduction to your brief, you say you generally endorse the proposals in the white paper and then that you intend to speak only on those matters that fall within your areas of knowledge and responsibility. I am a bit puzzled by that. It seems to me that the changes with respect to a standard for appraisers, the adoption of appraisal procedures within trust and loan companies and the assurance that market value is the standard used, the particular reforms on which you focused, could essentially have been incorporated into the existing act without all the other superstructure of regulations proposed in the white paper. Can you comment on that?

Mr. Beaton: I do not want to run through the white paper, but what I see in reading it, and what some of us in the society see, is a system that tightens up in the area where appraisers are embarrassing their fellow appraisers. It goes beyond the particular points we have discussed. There are people to be appointed, a system to go into place, and all these things. Without going into critical analysis, there is certainly an area of reassurance of which we approve.

Mr. Breithaupt: It is not where appraisers are embarrassing other appraisers, it is where certain persons with opinions are embarrassing those who have been particularly qualified. Unless you are going to make everyone who is going to be giving an opinion a required member, with the qualifications of your organizations, then I do not see how you can feel embarrassment since, to take the examples that have brought us to this committee, the persons involved likely will have very little

personal interest in becoming members of your association.

Mr. Beaton: Our embarrassment centres, to take the phrase in our brief, as it must centre, on client-dictated values. We do not like any situation that produces or causes pressure for client-dictated values.

If you retain a professional to give his opinion, certainly in our society, but in any situation, you should not be asking him to deliver your opinion, to recycle the number you want. This is embarrassing to us because it presents an image of our profession as being a profession in which some--goodness knows how many--may be susceptible to the pressure that produces client-dictated values.

We do not like this and so we say: "Here is an area where they have been found and it is an embarrassing area. We approve of the notion of a set of changes which are going to tighten that up, and are likely to tighten it up considerably." That is really what I am saying about embarrassment.

Mr. Cassidy: Perhaps I could ask the question this way: I am a bit surprised. Most of the professional groups who come are hesitant to recommend more government regulation, as are most business groups. Generally they are arguing for less rather than more. I appreciate you are making recommendations at two levels or two tiers. I do not disagree with what you are suggesting.

Let us suppose that by negotiation or some other way there were standards for appraisers, that the trust and loan companies were required to have those with respect to their appraisal procedures, that it was clear the act called for market value as the means of valuing properties for mortgages, maybe with some special procedures called for in those one-of-a-kind situations. Let us suppose, on the larger properties of \$1 million or more in value, there was a requirement that appraisals be done by an accredited senior appraiser in one of the societies.

Would that represent a significant stopping up of the concerns you share or only a partial stopping up? If you wanted to put it another way, on a scale of one to 10--

Mr. Breithaupt: No. You are not supposed to do that. This is bound to be at least a two, I am sure.

Mr. Cassidy: On a scale of one to 10, how far does that take you to a situation where we could in the future avoid having to worry about these client-dictated appraisals?

Mr. Beaton: On a scale of one to 10, I cannot tell you how big an iceberg is under the surface from the tip I can see. Various materials have various densities. We do not see any more than you do--we see more than you, but we do not see how great the problems are. We only see the problems which land on our desks or are in the newspapers. We do not know how great the problem is. We know that for every situation we find, there is probably one that is not found.

You can enlarge the discussion. What we are saying is there is a need for the things which are in here and we can live with them. We really do not want to go much beyond that.

Mr. Breithaupt: Responsible people always can and that is part of the problem and why we are here.

Mr. Beaton: Beyond that you can say: "There is going to be a new set of problems in some other appraisal area. There is going to be a new set of problems in some other function of the trust company."

I can tell you about trust company situations in another province, under another law, which are on my desk at the moment. They not substantial but they are nasty. I am advising. You do not want to hear that because it is not within the purview of this committee, but the point is that within the things we are looking at today, those are our views. I am not at all sure where the next problem will occur or how long it will take. I hope what we see happen this year in this area will last a generation.

Mr. Cassidy: What I was going to say next was this: If we were to talk in terms of a one, a 10 or a nine, there are other considerations involved. For example, to tighten up the situation to get us up to a 10 in protecting against client-directed appraisals may on the other hand either hinder normal trust company operations or be an excessive amount of government regulation. I am shocking my friends in the Conservative Party when I say these things.

Therefore, for those reasons, for reasons of efficiency or whatever, one may hesitate to go that far and only go part way.

Mr. Beaton: If you want neutral territory on that, what we may be talking about is neither of these things. To take the middle ground, we may be talking about regulation if necessary, but not necessarily regulation.

12:10 p.m.

Mr. Cassidy: May I ask another question?

The Vice-Chairman: Mr. Cassidy, one more question. I would like to get to Mr. Renwick before we adjourn.

Mr. Cassidy: Okay, my question is this. You say you are not really prepared to comment on the application of codes of ethics by the other associations, is that right?

Mr. Beaton: No. I think each society should come forth with its code of ethics and say, "Here is how this affects us."

Mr. Cassidy: In the case of your association, however, who initiates any complaint about an accredited member's failure to adhere to the code of ethics, what action is taken and what sanctions exist or have been used in practice?

Mr. Beaton: A complaint can be initiated by the public

or, as a duty, by a member of the society. If I see a lapse of ethics, I really have a duty under my code of ethics to make the complaint. The obligations on us under this code are quite heavy. We cannot say, "Maybe it is up to someone else." I really have a duty there.

But the public does, and most complaints do come from the public. I sat on the international ethics committee for three years, so I have looked at a lot of complaints.

Mr. Breithaupt: How many members are there in your association?

Mr. Beaton: In Canada we just have a few more than 100, but in our whole society with our American affiliation we have I do not know how many thousands. The American Society of Appraisers and the Canadian Society of Appraisers together are about the same size as the Appraisal Institute of Canada. That is the general rule of thumb that we see.

Mr. Breithaupt: That is your total.

Mr. Beaton: Yes. The ethics problems exist in real estate, but they are nothing compared to the ethics problems we have to deal with in our fine arts discipline. That is where you really learn the rules of ethics inside out, because the ethics cases in fine arts, as you can imagine, are quite a heavy responsibility.

Mr. Cassidy: There is a wider area to interpret there.

Mr. Beaton: That is right.

Mr. Cassidy: What is the sanction? What happens if a complaint is lodged? Who hears it and what is the range of discipline that is handed out?

Mr. Beaton: A local committee is appointed and a report is written. The report is then submitted to the board of directors and also to the international governors, because if you are out of one society you are out of the other.

The range of things that can be done goes from only a caution or admonition through to expulsion. We have no right to levy fines or fees. A breach of discipline in the ultimate only means you get kicked out.

The Vice-Chairman: If I may be allowed to interject, certainly I would think that anyone who likes to have some identification alongside his name would find being drummed out of the organization very difficult to deal with.

Mr. Beaton: Yes. I am a little rusty on this, but I believe there is a pact between the societies that expulsion from one produces expulsion from the others.

Mr. Breithaupt: Has that happened recently?

Mr. Beaton: Not recently, but it has certainly happened.

Mr. Renwick: Mr. Beaton knows it is no discourtesy that I had to leave this morning. I was sorry I was not able to hear the presentation. I have had an opportunity at least to skim through it. I have a couple of very specific questions about market value and then one or two more general ones.

The first one is about the definition of "market value," which you set out and refer to from the Ontario Expropriations Act and Assessment Act on page 5. I have difficulty with the adequacy of that definition, although it is a very traditional definition of sale.

Do you not think it is necessary to stipulate, if we are driven to a definition, that the dreaded words "arm's length" be used in that definition somewhere? I say "dreaded" because of the income tax problems with that--

Mr. Beaton: I am not sure that any arm's-length transaction takes place in the open market. I think an arm's-length transaction does not take place in the open market. I think the term "in the open market" disqualifies arm's-length transactions.

Mr. Renwick: The reason I was prompted to ask that question is, as a Christmas present I was given that book on the trust companies which outlines some of the problems Cadillac Fairview had in putting those properties on the market and their concern that they would find a buyer for them and so on.

The whole of that process would indicate to me there was really not something called "an open market," that it was very idealistic to talk about an open market. As it turned out, the first sale was an arm's-length transaction. I find the phrase "open market" is an elusive one when we are talking of large blocks of real estate.

Mr. Beaton: There are two or three things here. First, this is not the first time in the history of Canada that a large real estate complex of portfolio real estate investments has been sold off. It happens regularly in different places for different reasons. I myself have advised on two of these portfolio cleanup situations in my appraisal career. It does not happen every time, but I have been through the mill twice on a thing like the Cadillac one. It is not a once-in-a-lifetime matter by any means.

The second thing is--maybe this is a fair statement--Cadillac Fairview is an organization of considerable talent and experience. They are in many aspects of real estate, but when they built properties they used to build them and keep them. Their experience covered all facets of real estate except selling.

This was really the area of their inexperience. Selling was a new thing for them. That is an overgeneralization but there is some truth in there. Here they are selling for the first time and on a big scale and they may be a little bit captive of their

inexperience. They are doing the best they can, they are getting the best advisers they can and they are getting the best results they can.

The Vice-Chairman: Mr. Renwick, if I might just interject. Mr. Beaton has been kind enough to supply to the committee this document appraising Cadillac Fairview. It will be held by the clerk, if you would like to--

Mr. Renwick: I will read it tonight.

Mr. Beaton: I think there was a big open market here. It is all described at the end of section 1 of the case study.

Mr. Renwick: Let me go on to my second question.

My sense is that people buy real estate for relatively long-term investment purposes rather than for immediate resale--if I can make that sort of statement. Sometimes for immediate resale, sometimes for long-term investment. If you are buying for long-term investment, let us assume for the moment that you could go back to the turn of the century or 50 or 60 years and you could plot the devaluation of the Canadian dollar over that period and you were buying as a 30-year investment forward. Are you able, with whatever care and attention one can give to that question, to take into account the inflationary aspect of what you are buying in determining the price you are going to pay for it?

Mr. Beaton: There is no way that you are going to pay any more than anybody else. If everybody else is getting bargains, you will want a bargain too. If everybody else is paying \$100,000, you are not going to pay \$110,000 or \$150,000 because you think 30 years. You are going to pay the same price. In other words, the notion is that man is an economic, prudent being. He is going to pay a price which, if not exactly on the nose of the market, is very much in line with what everyone else is paying in the market.

It is the same if anybody sells. He is going to do the same thing. Obviously, there are nonmarket factors in most sales; one person is a little more anxious to sell than the other is to buy. Market is the consensus of what everybody is doing.

12:20 p.m.

Once you start looking into the mind of one party, you are not talking about market value; you are talking about value to the owner, value to a particular purchaser. You have the old adage: "Price is what you pay, value is what you get." Of course, market value is just the consensus of market prices. It has nothing to do with what people expect to get. Some people are optimists, some are pessimists. But in the end, the market excites or humbles us all, depending on what camp we started from and where the market ended.

Mr. Renwick: All right. I just think there is a certain fictional sense about this definition. I do not think one has a problem when there is an open market and both a willing buyer and seller. You can shop around, you get the price, you find out what

it is and you really do not need an appraiser to tell you about it.

The role of the appraiser comes in when the item is not readily saleable, and one wants to be able to say, "What is the price at which I am going to put it on the market?" You call into play certain skills because there is not an open market. You have to engage in the fictional world of creating a sense of what you would say would be the price, if there were an open market and if there were a willing buyer and a willing seller. It is that fictional part that bothers me about the appraisal.

Mr. Beaton: There is a fiction here. The fiction is this property will sell at the same price as everything else. We know it will not. We say, "We will sell it a little higher, a little lower." If everything is sold at market value, everything would be sold at exactly the same price, which it does not. There is the fiction. But market value becomes a little bit notional. It is not factual; with the words, "might be expected to realize" it is a little bit notional.

You might expect a property to realize the same price the other 18 properties realized, the average of the 18, or the middle group the other 18 realized. That is what might be expected. For instance, if you go to court with any other notion, the judge is not going to be sympathetic. He is sympathetic to the notion it might be expected to do what most of everything else is doing.

The words in this definition are very powerful words. "Might be expected" is a very powerful phrase. So are "in the open market," "willing seller," and also "willing buyer." They cover dozens of market implications and they cover them very well. Every time you test the definition, you discover how good it was when they wrote it.

Mr. Renwick: My last question relates to this strange problem with respect to valuing for mortgage purposes. I always get worried when one starts to distinguish value in the sense of how you value a piece of property for mortgage purposes as distinct from an open-market purpose.

Since the major lending institutions, the trust companies, went into the mortgage market, my impression has always been--I like to say it has always been but actually it changes a lot--the companies had consumers of residential property against whom they imposed very strict rules of appraisal. They drove many purchasers to the dangerous problem of the second mortgage.

That has been my view. They have taken the view that the person to whom they are extending the loan is going to go into default. They are going to be forced to foreclose the property or put in on the market under the power of sale and they are going to have to run for cover because of that.

Of course, in the real world, a substantial lending institution is not going to find itself with a number of properties it needs to foreclose on and that it will have to dump on the market. I do not think the reference in the white paper and your reference to it in the report of the Proposals for Revision

of the Loan and Trust Corporation Legislation and Administration in Ontario, page 28, 2(a), fully take into account the judgemental question of the value of the covenant on the mortgage to pay the mortgage and give too much weight to the question of this "for sale on the open market."

I have always felt sorry for people who have had to take a second mortgage in circumstances where there is a default on the second mortgage or a default on the first mortgage and they lose it to the second mortgagee. There has been to my mind, although some people say it is legitimate, an element of illegitimacy in forcing people by the conservative valuation that is opted for here in the white paper on a residential purchaser. Ultimately, of course, on some occasions it leads to a third mortgage situation.

Mr. Beaton: Appraisers are not competent to value covenants. Appraisers are not competent to estimate the plus-up that goes or the discount that goes with the quality of a particular covenant applied to a particular property. It is not part of the education they get; it is not part of the normal work they do; it is not part of their accepted professional function.

While these problems are real, the job of the appraiser is to find the thing generally known as market value. After that it is up to somebody else to write the policy that goes with it, just like the 75 per cent rule or the National Housing Act rule or whatever rule you have.

Mr. Renwick: I understand that is not your role. The problem is that this value has become the value that directors of trust companies have used without exercising the kind of judgemental question that is involved about who they are lending it to and what the value of that covenant is, and giving undue emphasis to the foreclosure for sale.

Do you indicate that your appraisal is exactly what you say it is? An appraisal, and that is all. The question of judgement is for somebody else.

Mr. Beaton: That is a very good point. When an appraiser appraises a property, he should be told the purpose. If he is not told the purpose, he should not appraise the property. He should say, "As part of my terms of reference, I want you to tell me why I am appraising it." If it is being appraised for any reason at all, if it is an all-purpose appraisal, then he should be told it is an all-purpose appraisal. It may be an insurance appraisal.

Some appraisers may feel, having gone through the market, found all the evidence and formed their opinion, they should not really be talking about the same opinion for a buyer: "You may have to pay as much as this if you are going to get it. Market value is this figure, but if you are really going to get it, the market is pointing that way a bit. It may not be worth that much, but you may have to pay more if you are going to get it." That is why the buyer wants to know. If it is for mortgage purposes, the appraiser should be told it is for mortgage purposes.

Some appraisers will err on the side of being conservative. I believe this to be true.

Mr. Cassidy: You said appraisers are neither trained nor qualified to value covenants. It is my understanding, in the case of the extra \$170-million valuation on Cadillac Fairview, it is essentially a covenant. Is that right?

Mr. Beaton: I noticed that.

The Vice-Chairman: I think it is very appropriate at this point, Mr. Beaton, for the committee to adjourn its deliberations for the morning. I want to thank you very sincerely. I am sure your brief and comments have been most enlightening to every member of the committee, and I thank you for taking the opportunity to appear.

Mr. Beaton: Thank you very much for your time and courtesy, Mr. Chairman.

The committee recessed at 12:30 p.m.

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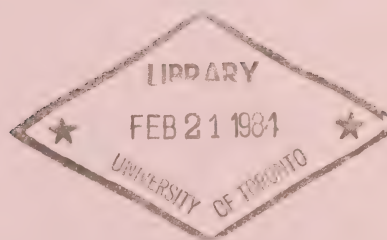
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 14, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
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Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
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Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Co-operative Trust Co. of Canada:

Feron, J., Member, Board of Directors
Gebert, E., Chief Executive Officer
Lipsett, J., Corporate Secretary

From Seel Mortgage Investment Corp.:

Exton, L. R., Director and Treasurer
Waisberg, L., Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 14, 1984

The committee resumed at 2 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Vice-Chairman: Recognizing a quorum, we will come to order. Mr. Lorie Waisberg, will you come forward, please, sir?

Mr. Waisberg: I have my client with me.

The Vice-Chairman: Your client is more than welcome to take the table with you. Please identify yourselves. The brief is exhibit 24. Do you all have a copy of that?

Mr. Renwick: I have not got a copy.

Mr. Breithaupt: Perhaps the bundles could be distributed.

Are neither Confederation Trust nor the Co-operative Trust Co. of Canada going to be appearing?

The Vice-Chairman: I am sorry, what was that? The old schedule has just been reversed. We are having Co-operative Trust as the second witness this afternoon, if that was your question. Unfortunately, the other schedule was out of order when it was printed. I should have mentioned that and I apologize.

Having said that, Mr. Waisberg, perhaps you would like to proceed.

SEEL MORTGAGE INVESTMENT CORP.

Mr. Waisberg: I really, I have a very simple submission to make to you this afternoon. Seel Mortgage Investment Corp. is a federally incorporated mortgage investment company. It was incorporated in late 1974 in response to legislation introduced by the federal government in the summer of 1973 designed to encourage investment in residential mortgages.

The theory of a mortgage investment company is that it acts as a way of collectivizing mortgage investments and acting as a conduit for tax purposes. It is like a mortgage mutual fund, except that it is not issuable or redeemable, but in the sense that it is an investment fund designed to channel investment into residential mortgages, it is like a mutual fund.

Seel has been managed since its creation by Seel Enterprises Ltd., a company that is controlled by the Exton family. Eric Exton has been in the mortgage business in this province for

approximately 30 years. He is a very well-known mortgage broker. His son, Leonard, is with us today.

Eric Exton would have preferred to make this submission himself. It is not his way to call on mouthpieces to make submissions, but he is recovering from a series of heart operations and did not feel well enough to make the presentation today on his own. You are getting the next best, and that is his lawyer and his son.

Hon. Mr. Elgie: Are you saying that or do you make your own decisions about that?

Mr. Waisberg: It is not part of the formal submission. I tell you that by way of background, because I think it is useful for you to understand how narrow our submissions are. We really want to speak only about the recommendation that mortgage brokers be ineligible to serve as directors of loan and trust companies and we also wish to speak about the prohibition against management contracts. We want to speak about both of these questions because we have a strong personal interest in them both.

Both Eric Exton and his son, Leonard, are mortgage brokers. Seel Enterprises carries on a mortgage brokerage business. It is not as it once was, when it was the predominant part of the business. Today, I do not think it could be described as the predominant part, but it is still a very important part of the business and it fits into the whole operation.

Seel Mortgage Investment Corp. is not the only mortgage activity that the Extons perform; rather, Seel Mortgage Investment Corp. is an investment fund that they administer and manage. They bring investment opportunities to Seel Mortgage Investment Corp., they administer the mortgages for the corporation and they carry on.

Both the senior Exton and the junior Exton are extremely well qualified in the business of making mortgage loans. That is their business. The senior Exton has served Ontario as a member of the Commercial Registration Appeal Tribunal. He has been a member of the Ontario Mortgage Brokers Association and other similar associations.

They are very knowledgeable people. To deny loan and trust companies the opportunity to have the benefit of counsel from such people does not seem to make a lot of sense. Because one mortgage broker has behaved in a manner that is not in the interest of the public, it does not seem to make sense to eliminate all mortgage brokers from the capacity of serving as directors of loan and trust companies. That is the first point we want to make.

If you want some more background about the Extons, certainly Leonard Exton would be delighted to fill you in and tell you what experience they have in the business.

If not, I will turn to the management agreements. As I stated at the outset, mortgage investment corporations were created to provide another medium to invest in mortgages. The

federal government felt that if there were many people investing in residential mortgages, there would be a sounder residential mortgage market.

The idea was to attract investment funds into investment in mortgages. Rather than having people invest in individual mortgages, there would be some attempt to collectivize it. They created mortgage investment corporations. They dramatically restricted the leverage permitted mortgage investment corporations. They are not full-fledged loan companies.

In the creation of mortgage investment companies they contemplated that they would be administered by third-party experts. There are a number of instances in section 105 of the federal act, pursuant to which Seel Mortgage Investment Corp. was created, which would indicate it was expected that there would be external advice, external management.

That makes sense, because to start up a mortgage investment company without an external adviser would require the sort of investment and the kind of stake that would have been inappropriate.

The recommendation contained in the white paper is to the effect that management agreements approved by the registrar be exempted. We think there should be a few more exceptions permitted.

The first would be to exempt mortgage investment companies because they really make sense, especially when they are externally managed.

The second exemption we would proffer for your consideration is one for management agreements that have been approved by the primary regulator. In this case, Seel is incorporated under the federal statute. The management agreement between the loan company and Seel was approved by the federal registrar and we think that should be enough. We should not have to seek the approval of two people.

The third exception we would urge on you is not to change the rules at this stage of the game. Seel has been in existence since 1974. It has done two offerings. Because there is a restriction in the federal act that no one shareholder can own more than 25 per cent of the shares, it had to go public almost immediately. Everybody was buying the external management, if you will, of Seel Enterprises Ltd.

To change the rules of the game now, we think is not entirely fair.

The fourth is an exception which would contain standards for ensuring fair dealing. The Seel arrangement ensures that notwithstanding the fact that the management company can deal with the loan company, there are adequate safeguards. Those are appraisals whereby the manager has an interest in the proposed transaction and approval of the transaction by a committee of independent directors. We think those two things, given the limited nature of the operations of Seel, provide adequate

safeguards for the public, both public shareholders and public depositors.

Those are our submissions.

The Vice-Chairman: Thank you very much, Mr. Waisberg. The first questions are from Mr. Gillies, then Mr. Breithaupt.

Mr. Gillies: We thank you for your presentation, Mr. Waisberg. It may have been very specific, but I think you have raised some good points and we should look at them.

I want to direct a question to you and to the ministry about your first point on the mortgage brokers as directors. You say in your presentation that there are other mechanisms available to the ministry to control abuse, short of proscribing mortgage brokers from sitting as directors. I wonder if you could suggest the type of things you envision.

Mr. Waisberg: One of the primary duties of the director is the so-called fiduciary obligation, the duty of loyalty, the duty to act in a manner which prefers the interest of the corporation to the self-interest of the director. I would have thought this is the first place to look for a remedy.

The second would be to prohibit transactions which do not meet the general commercial norm. I do not think there is anything wrong with conflicts. What is wrong are undisclosed conflicts or conflicts resolved in the interests of the individual. Just saying, "There are conflicts, therefore let us do away with all conflicts," seems a very crude way of dealing with the problem. Some conflicts are potentially so serious you have to prohibit them.

For instance, the present statute contains prohibitions on loans to directors. It is arguable that that situation is potentially so abusive you should prohibit it altogether. I do not think one has to be that crude in dealing with this potential for conflict. I used the word "draconian" in the brief, and maybe that is a little strong. There is a potential for conflict. But there are standards at common law, in the statute, and mostly in the realm of fiduciary duty, but not only there.

Mr. Breithaupt: On a supplementary to that question: Why does the ministry feel it is necessary to have complete ineligibility for this class of persons, any more than it should be lawyers or any other particular class? Looking at the background of the junior, smaller trust companies particularly, I would think it is fairly common for persons with a mortgage broker background to become senior officers or shareholders in these companies.

In order to get a discussion going, if Mr. Waisberg has made some unreasonable points, I would like to hear from ministry officials as to why it should be so stringent.

Mr. Thompson: In looking at this type of situation, Mr. Waisberg is very eloquent on that. He has conceded there is a

potential conflict of interest. In our view, unlike the role played by lawyers or chartered accountants, the intrinsic nature of the role of the mortgage broker--basically to find or place mortgages--is so fundamental to the operation, we felt the most effective way of dealing with it was simply prohibition. We put that forth in a white paper for discussion purposes.

We clearly want discussion on that. We have identified the issue as to a potential conflict-of-interest situation.

Mr. Gillies: I want to reinforce the point my friend has made. In the white paper, the next recommendation you mention after the proscription of mortgage brokers is that conflict-of-interest guidelines should be strengthened. I do not think there is any doubt in our minds they should be.

I wonder if in many cases there are reasonably innocent conflicts and which if declared in advance are all the more innocent. I wonder if the ministry could not look at other mechanisms, short of proscribing a whole class of business people. It bothers me a little.

2:20 p.m.

Mr. Thompson: If I may respond to that, it bothers us a great deal too, but I am not sure if we could define that to such a degree that we could cover off that conflict of interest situation. That is the problem we have. There seems to be such an apparent or ostensible conflict in it. What could you do by way of disclosure or prohibiting a certain type of transaction, or would you essentially be destroying the whole fundamental relationship?

Mr. Breithaupt: There is no trouble in defining in subsection 8 the various other prohibitions without prior approval. That strikes a balance that seems fair.

Hon. Mr. Elgie: It is an area we are going to have to look at.

Mr. Thompson: I agree with you there.

Mr. Breithaupt: I think so.

Hon. Mr. Elgie: To be fair, the original concern expressed by those who were involved in the drafting was that there was a fundamental conflict in the roles. As you say, there are many other people who might have similar conflicts and we may well have to look at some variation on that theme.

The Vice-Chairman: Mr. Breithaupt, do you have any further questions?

Mr. Breithaupt: No, that is fine, thank you.

Mr. Cassidy: I would like to ask a question of the minister rather than of the witnesses. I hesitate to ask you to do this, but going back to the situation in the last couple of years,

were there many specific situations where the role of registered mortgage brokers might have contributed to some of the conflicts or problems?

Hon. Mr. Elgie: In the present situation? No, not that we identify.

Mr. Cassidy: So there is no smoke there that would justify--

Hon. Mr. Elgie: Not that I am aware of.

Mr. Crosbie: Speaking to that point, Mr. Chairman, you may recall from our runthrough of the act when we dealt with the mortgage investment corporations, we pointed out there are no Ontario incorporated loan corporations that are designated as mortgage investment corporations. They are only at the federal level.

Hon. Mr. Elgie: They are allowed here, though.

Mr. Crosbie: They are allowed here. The act contemplates them. I think probably the trap we have fallen into here is that when we were dealing with this conflict of mortgage brokers and directors of corporations, we did not specifically direct our minds to the situation of the federal mortgage investment companies.

As the minister and Mr. Thompson have indicated, it is an area where we have to do a little more homework and take a hard look at just how our concern about a trust company and a mortgage broker operating out of the same offices, that sort of a situation that was a very great concern to us, relates to a mortgage investment company, if it does relate at all.

Mr. Cassidy: You were thinking about the guy who hangs out his shingle as a mortgage broker, maybe a local lawyer or somebody like that who then qualifies as a mortgage broker, rather than somebody in an operation to the company.

Mr. Crosbie: If I may give an analogy you may be familiar with, there was Astra Trust and Re-Mor. Re-Mor was the mortgage broker and Astra Trust was the trust company. They operated out of the same offices. People went in to get a trust investment and wound up with a mortgage investment.

Mr. Breithaupt: But in this circumstance--

Mr. Crosbie: It is quite different. I am not suggesting it relates to it. I am saying that is the type of concern that was at the back of our minds.

Mr. Cassidy: So there was a specific factum then.

Mr. Crosbie: No, it was not a mortgage investment company.

Mr. Breithaupt: It had nothing to do with the Seaway-Greymac event?

Mr. Crosbie: No.

Hon. Mr. Elgie: But of recent and searing memory, none the less.

Mr. Cassidy: My other question relates to this. I am not sure of the nature of your parent company, Seel Enterprises, and what kind of operations it is in.

Mr. Waisberg: It is a mortgage broker.

Mr. Cassidy: So, basically, it finds and then the investment company invests. Is that right?

Mr. Waisberg: That is right. It generates the opportunities, the directors make the policy decisions and the specific investment decisions, but the investment decision having been made, Seel Enterprises then manages the investment for the account of the loan company.

Mr. Cassidy: Is a substantial amount of the mortgage business generated by the mortgage-broking side on Seel Enterprises' own account?

Mr. Waisberg: Yes, a substantial amount. The percentage varies from year to year. When it started the percentage was fairly small. Today it is a substantial amount, but not 100 per cent, probably not even 75 per cent.

Mr. Cassidy: Maybe I had better ask the question again because I am not clear of the answer. I am not even sure the question is correct. Does Seel Enterprises do any development or other things on its own account as opposed to going out and finding people who need a mortgage?

Mr. Exton: Yes.

Mr. Cassidy: How much of the mortgage lending by Seel Mortgage Investment Corp. is on account of developments in which Seel Enterprises is the principal?

Mr. Exton: None.

Mr. Waisberg: It is prohibited.

Mr. Exton: Even my own house would not be mortgaged by Seel Mortgage Investment Corp. because of the conflict of interest.

Mr. Waisberg: But the federal statute carries the prohibitions to directors on up to the management company.

Mr. Cassidy: Right. If you think of some recent history in Ontario--and you were not here on earlier things, but we have to talk euphemistically to keep Mr. Mitchell happy--

The Vice-Chairman: Indeed.

Mr. Cassidy: --if you think of recent situations in Ontario where there was a tremendous amount of incestuous trading and bidding up of values between business partners who were certainly very close, would that kind of thing be permitted under those federal laws or would the federal conflict of interest provisions have struck it down long before they reached the level they did?

Mr. Waisberg: I guess there would be nothing prohibiting the so-called reciprocal dealings that were really at the heart of the events you are referring to. That is a very difficult problem. But direct dealings of the kind you are referring to between the mortgage broker and the loan company would not be possible.

Mr. Exton: No. You can have only two inside directors out of the eight we have on the board, and the two inside directors happen to be my father and myself.

Mr. Cassidy: Explain that to me. You mean that on the board of a mortgage investment--

Mr. Exton: On the board of Seel Mortgage Investment Corp., which I am discussing now, there cannot be any more than two inside directors. The other six directors are from different walks of business.

Mr. Cassidy: So whether they are tame or not, they must at least be outside directors, is that right?

Mr. Exton: That is correct.

Mr. Cassidy: Is there any requirement in our present act for a certain number of outside directors? I do not believe there is, is there?

Mr. Thompson: No, not to that specific degree.

Mr. Cassidy: Is there to some degree?

Mr. Thompson: Yes. There is one on audit committees, etc., that presupposes outside directors will be on as representatives.

Mr. Cassidy: Are audit committees obligatory or not?

Mr. Thompson: Yes, they are.

Mr. Cassidy: So it is there, but it is much weaker than it is in the federal act.

Mr. Thompson: In this particular area, yes. Overall they are generally pretty well uniform.

Mr. Waisberg: Understand that the federal act simply says that where there is a management agreement, the manager

cannot have any more than a quarter of the directors of the managed company; that is all the federal act says. It does not speak generally to loan corporations; it speaks only to mortgage investment corporations that have external management.

Mr. Cassidy: Do any of your six outside directors also hold positions as directors on the board of Seel Enterprises?

Mr. Waisberg: No, they could not. They would then be disqualified.

Mr. Renwick: Mr. Waisberg, if we were to recommend that there not be the exclusion for registered mortgage brokers, what would be the alternative ways in which we could cope with the question of conflict of interest? The term "conflict of interest" does not bother me as such. The question is whether or not the people who are sitting around the table with you making decisions know about it and that you not participate in the decision or you leave the room or whatever.

Mr. Waisberg: I can think of three things. The first is an articulation of the duty of loyalty, which the statute does not now articulate, although I am satisfied it is there simply by holding the office of director. But I think it would not be a bad idea to articulate that standard and to put it into the statute as it is in the federal and provincial business corporations legislation. That is the first and obvious thing.

2:30 p.m.

The second thing might be to have a section similar to the one in the Ontario Business Corporations Act that refers to accountability. In effect, it says that people who deal with a corporation where they have an interest on the other side are accountable for profits unless A, B and C. I think that would also be useful.

Third, it is wise to focus on the potentially most abusive transactions, such as loans to yourself, and eliminate them. You could say those cannot be done. With that sort of regime, you are reasonably certain there are not going to be any serious problems. Nothing is going to eliminate dishonest characters from any business. That is in the nature of things.

Mr. Renwick: Those three suggestions, plus disclosure of interest, refraining from holding and absenting yourself, if necessary--

Mr. Waisberg: Sure. I think it is there now.

Mr. Renwick: Pardon?

Mr. Breithaupt: That is there now, to all practical purposes.

Mr. Waisberg: The accountability one could be better articulated.

Mr. Renwick: Yes. If the minister holds to his view that we are not going to place any shareholder limitation on loan and trust corporations, one of our major problems in dealing with this is the independence of the board, the number of persons who can be legitimately seen to be not captive directors.

Mr. Exton: As a matter of fact, there is one inside director on the executive committee and three outside directors. There is an unwritten agreement between all four of the gentlemen involved that if a mortgage application comes in and there is even one person on the four-member board who does not like that deal, Seel Mortgage Investment Corp. does not take it.

Mr. Renwick: There is almost a veto power--

Mr. Exton: It is a veto power--

Mr. Renwick: --vested in each member of the executive.

Mr. Exton: --of each one--exactly the same. If my father likes it and the other three do not, or three of them like it and one does not, it is not given to Seel Mortgage; it is syndicated out through Eric Exton, in trust. Obviously, we have agreed to it, we like it and we take it on in our other portfolio.

There are so many controls we have put in which have not been put in by the government that we feel we are being angels compared to what the government even wants of us.

Mr. Renwick: Is Seel Enterprises Ltd. basically a family business?

Mr. Exton: Seel Enterprises Ltd. is a family business, yes.

The Vice-Chairman: Are there any further questions?

Mr. MacQuarrie: Dealing with the mortgage investment corporation, I do not know if this has been covered or not, but what sort of proportion of the shareholders are not connected with Seel Enterprises Ltd. proper?

Mr. Exton: Are not?

Mr. MacQuarrie: Yes.

Mr. Exton: The proportion is 75 per cent.

Mr. MacQuarrie: Does Seel Enterprises Ltd. hold about 25 per cent interest?

Mr. Exton: Seel Enterprises Ltd., the Seel Enterprises Ltd. pension plan to Guaranty Trust, the Exton Charitable Foundation, my father personally, myself personally, my mother and my wife, in total, do not own more than 25 per cent.

Mr. Waisberg: Which is the limitation--

Mr. MacQuarrie: Under the federal legislation, yes. You are operating also in connection only with mortgages referred to under this Residential Mortgage Financing Act, so you are dealing primarily with residential mortgages or solely with residential mortgages.

I tried to follow some of your comments with respect to management contracts. I can see a contract approved by the primary regulator, management agreements going back some time, but I have a bit of trouble with the third one there, management agreements with the management of any mortgage investment company. On the basis, seemingly, that these mortgage companies cannot stand the loan and that they need some external management control, there are some questions in my mind about that. You demonstrate that for the year ending December 31, 1983, you had a total income of \$2.1 million on an investment portfolio of approximately \$14 million. That was not a bad return.

Then on your debentures, bank loans, etc., you had expenses of \$1.3 million and the \$272,000 cost of operation. How would that generally compare with a mortgage investment corporation standing on its own, administering \$14 million worth of assets?

Mr. Waisberg: It is hard to pick a number, of course.

Mr. Exton: I think I can answer this. We have a president, Eric Exton. You have to have a president in a mortgage investment corporation who is the senior man on the job. Let us say \$100,000 is a fair figure to pay someone with his experience.

You have to pay someone like me who has had six years' experience. I am a chartered accountant. I have gone to school. People in my age bracket and with my experience earn \$50,000. You are talking about someone to do the bookkeeping, someone to do the computer operations, a secretary and an office. With all these things put together, you are talking about a lot more than \$272,000. It would not be viable, especially in the first year of operation. You could not make it.

Mr. MacQuarrie: In this case then, in charging under the management contract and charging back the mortgage financing company, you are sort of billing the time you spend, or is it specified in the contract?

Mr. Waisberg: It is one eighth of one per cent of the assets per month.

Mr. Exton: On \$14 million, it works out to approximately \$10,000 a month. In addition there are some other costs, out-of-pocket expenses, that are charged. There are no employees of Seel Mortgage Investment Corp. They are all employees--

Mr. MacQuarrie: What other controls are put under the management contract you apparently had a long time gaining approval of? if I recall correctly, there were lengthy and laborious negotiations with the feds to get approval of the management contract. What sort of strings did they attach to how much you could be paid? You could see them limiting--

The Vice-Chairman: Mr. MacQuarrie, may I ask you please to try to make your comments into the mike for the purpose of Hansard.

Mr. MacQuarrie: I am sorry. I was wondering what sort of strings they attached and how many loopholes there were in building up these other items, out-of-pocket expenses and the rest of it that were not within the one eighth of one per cent or whatever it might be.

Mr. Exton: I think there is one thing you may be forgetting. This is the normal practice for all mortgage investment corporations and mostly for trust and loan companies. They include in "other operating expenses" any write-offs for bad debts. Included in this figure is a figure for mortgages that have gone out for arrears and for which we are providing.

Mr. MacQuarrie: Do you charge actual write-offs, actual losses as they occur, or do you build up a reserve for bad debts?

Mr. Exton: There is a reserve. Under the Income Tax Act we are allowed to claim 1.5 per cent of the total mortgage portfolio, less any National Housing Act mortgages and any mortgages on which a specific reserve has been made.

Mr. MacQuarrie: NHA mortgages are, I would assume, mortgages insured by Mortgage Insurance Co. of Canada or whatever.

Mr. Exton: That is correct.

2:40 p.m.

The Vice-Chairman: I wish to thank you for your presentation today, Mr. Waisberg and Mr. Exton. It appears the questioning is finished in regard to your brief.

Mr. Exton: May I leave a curriculum vitae for myself and for Mr. Eric Exton, not generally but specifically for our own purposes?

The Vice-Chairman: Please do.

Are the representatives of Co-operative Trust Co. of Canada here? Mr. Lipsett, Mr. Gebert and Mr. John Feron. Please speak into the microphone and introduce yourselves for Hansard purposes.

CO-OPERATIVE TRUST CO. OF CANADA

Mr. Lipsett: My name is John Lipsett. I am the corporate secretary of Co-operative Trust Co. of Canada.

Mr. Gebert: My name is Ed Gebert. I am chief executive officer.

Mr. Feron: I am John Feron. I am director of Co-op Trust for the Ontario Credit Union League.

The Vice-Chairman: Who will be the spokesman?

Mr. Lipsett: I will, and I would like to make a few opening remarks.

The Vice-Chairman: This is exhibit 31.

Mr. Lipsett: Thank you for giving us this opportunity to speak to you today with respect to our brief pertaining to the white paper.

Co-operative Trust supports many of the proposals contained in the white paper. However, we did not deal with these at any length due to constraints in the preparation of our brief. Instead, we focused on those proposals that gave us some concern and on which we would like further clarification. We support many of the proposals and agree that certain controls must be in place for the protection of our investors and the public. We would, however, caution against overreaction to certain relatively recent events that have taken place regarding the Crown-Greymac-Seaway situation.

Co-operative Trust is unique both in its structure and its relationship to the co-operative credit union system. We hope the legislators understand and recognize this uniqueness in order to avoid passing legislation that would make it difficult for us to operate in all provinces where we provide services as a national co-operative trust company.

Co-operative Trust policy, which is supported by our co-operative and credit union shareholders, is to offer our services to the greatest extent possible through the credit union system. Since the company was created primarily to provide credit union members with all types of trust services, we recognize the best way to do this is to have our services available where the credit union member goes to satisfy his financial needs, namely, his credit union.

We also hope the legislators will recognize and take into consideration the uniqueness of our structure, namely, the fact that only co-operatives and credit union organizations can become shareholders. Individuals cannot become shareholders of Co-operative Trust. Due to the fact that only corporate entities can be shareholders, our special act of incorporation provides that an individual does not have to be a shareholder to be a director.

The federal government recognized our unique structure when it drafted subsection 35(5) of its proposed new Trust Companies Act. In effect, subsection 35(5) says that a director or officer of a local, provincial or national co-operative organization can be a director of a trust company. This is an exception in the draft act, which otherwise provides that a director of a competing deposit-taking institution is not eligible to be a director of a trust company.

I would like to refer to several of the concerns we raised in our brief. Although we feel all the concerns are important,

because of time constraints we will limit our comments to six specific areas.

1. We requested clarification of the proposal regarding the elimination of the power to incorporate or acquire mutual funds and mutual fund sales and management corporations. At present, we have several mutual funds within Co-operative Trust and we may want to establish other mutual funds within the company. In addition, eventually we hope to market these mutual funds through credit unions.

2. We are concerned with the suggested prohibition regarding the paying of fees or commissions to corporations controlled by a substantial shareholder, an affiliate, an insider or a corporation not dealing at arm's length. It would appear that credit unions could fall within one of these categories. This would seriously affect our working relationship with credit unions and our aforementioned policy of providing our services through them to their members. Many of these credit unions are actively involved in selling Co-operative Trust investments such as guaranteed investment certificates and registered retirement savings plans.

3. With respect to the filing of reports with the registrar, we are particularly concerned about the suggestion that minutes of board and committee meetings be filed. We do not question the right to have these documents inspected as is now done by the auditors for the federal superintendent of insurance, but we disagree with having to file the actual minutes.

In our particular case, board minutes are very detailed and there could therefore be problems with respect to confidentiality and a lot of extra expense because of the paperwork. Just as an example, our minutes sometimes run from 20 to 30 pages for a one-and-a-half-day board meeting.

4. We are disappointed that the Ontario white paper has rejected the federal government's proposal to dispense with the segregation of guaranteed trust funds and company funds in a trust company's accounting records. We feel that the concept of segregation is archaic and expensive to maintain. We do not feel that the trustee relationship would be destroyed or jeopardized if the practice was dispensed with. We therefore recommend that the committee give further consideration to this matter.

5. We are very troubled about the suggested proposal regarding real estate valuations for mortgage purposes. We hope the committee will take a serious look at this proposal. We are not sure how one could value real estate on the basis that is suggested and still have consistency throughout the trust industry. We are not sure that workable guidelines could ever be established to value property other than according to market conditions existing at the time of the valuation.

We do agree, however, that some standards should be set with respect to appraisals, as we have found that at any given time it is possible to have two or three appraisers come up with widely divergent valuations for the same parcel of real estate. We also

recognize that there have been problems with respect to inflated values.

We are concerned about the suggestion that a trust company would be required to obtain prior approval before the board of directors could hire a chief executive officer or a chief financial officer. This is unacceptable to us for the reasons that we outline in our brief.

Some of the best chief executive officers that Co-operative Trust has had were persons recruited from within the co-operative credit union system. The person who was hired prior to Mr. Gebert's appointment was instrumental in resolving some serious problems the company experience in late 1979 and 1980. He came on board in June 1980.

At the time of his appointment he had had no previous experience in the trust industry, although he was a chartered accountant and had managed a national insurance company. If the proposal suggested in the white paper had been in place at the time, we wonder if the registrar would have approved his appointment, which was based to a very large degree on his knowledge and experience gained in working within the co-operative credit union system. We feel that this function should continue to be the responsibility of the board of directors, which is elected by our shareholders.

In conclusion, we would like to make two further comments. We strongly recommend that there be more dialogue between the Ontario and federal authorities with the objective of making the federal and provincial legislation in this area as uniform as possible, taking into account specific matters that may be unique to one or other level of government.

We would also like to see this concept extended so that the loan and trust legislation in all provinces and the federal legislation are as uniform as possible. The benefit to trust companies operating across Canada in having uniform legislation is obvious.

We also trust that when the draft bill which will no doubt result from these hearings is prepared, that consideration will have been given to the unique relationship between Co-operative Trust and its shareholders, namely, the members of the co-operative credit union system. We also hope we will be given the opportunity to provide further input when the bill has been drafted.

2:50 p.m.

The Vice-Chairman: Thank you, Mr. Lipsett. Are there any questions? Mr. Breithaupt.

Mr. Breithaupt: I note that the presentation is really in two parts. The first part deals with a number of items for which clarification is sought and the other part makes particular recommendations.

Might it be reasonable for the superintendent's office to reply in writing to you, with respect to these various clarifications, to sort out your concerns but not necessarily go to the detailed recommendations we are receiving? Perhaps that would be a way of handling this portion of the brief, and it may interest the registrar.

Mr. Thompson: Yes, we would be very pleased to do this. In fact, some people have come in to discuss matters with us. We would be pleased to sit down with officers of the company and go over those items they seek clarification on, because I think they can be fairly readily clarified. I hope they can.

Mr. Renwick: Mr. Chairman, I have two questions. Suggesting the registrar will have to approve entry of a company into the fiduciary trust business certainly concerns me. We touched upon this briefly the other day. In my conception of the world, a trust company should have as a goal, reachable within a reasonable period, the obligation to provide the full range of trust services envisaged by the act, rather than simply have them in the privileged position of dealing only in the financial intermediary business. I certainly support the concern you express about the approval of the registrar for that purpose.

Also, I would worry about the government taking on the responsibility to hire the chief executive officer and financial officer. I think it would be very unwise for the government to assume the responsibility to either approve or veto the appointment of the chief executive officer and the chief financial officer.

The end result would be, if something did go wrong in the company, there would be ambiguity with respect to the degree of responsibility of the board of directors of the company and the registrar as to who was at fault. And if you approve once, does that mean, somehow or other, you are going to have to carry out some annual review of the activities of the chief executive officer? I have very real reservations from the point of view of the government.

I certainly think when we are the government, we will not want to have that responsibility.

Mr. Vice-Chairman: I am intrigued by your straight face that you suddenly turned into a smile.

Mr. Renwick: I know some of my opponents use the word "if" instead of "when."

I would appreciate the minister commenting particularly on the second point. We discussed the first point the other day, but I would appreciate the minister's or his deputy's response to the second point.

Hon. Mr. Elgie: Mr. Chairman, I would ask the deputy to respond to that. He was more actively involved in the drafting.

Mr. Crosbie: Certainly I share the concern about the

registrar taking on the duty of blessing, if you will, which I suppose is what happens when he approves the chief executive officer.

I suppose the position is more readily understood if you turn it around and ask what should the registrar do if there is an incompetent CEO running a trust corporation? What should the remedy be in those circumstances? Should there be any or do you just wait until he demonstrates the incompetence by making bad investments or putting the company offside financially?

Mr. Breithaupt: You could require a meeting of the directors, could you not?

Mr. Crosbie: Presumably you are saying moral suasion, then.

Mr. Breithaupt: You would think it would have a pretty lively effect.

Mr. Renwick: I certainly would prefer that approach to the question to having the initial approval. I certainly would not be averse to at least canvassing the proposition that it was something more than moral suasion in the final analysis if that became necessary.

Mr. Crosbie: If there were a better solution to the problem, I for one would like to avoid having to put some sort of Good Housekeeping stamp of approval on all chief executive officers; but I think it does have to be more than moral suasion.

I do not know. On the basis of dissatisfaction with, say, the chief executive officer would you be justified in reducing the borrowing ratio, for example?

Mr. Renwick: We can kick around some of the possibilities, but if it did turn out that there was any merit in this question of public interest directors, for example, that is very significant (inaudible) operation. It would be a very real public signal if the public interest director decided to resign from the board and made a statement simply resigning, very much like the governor of the Bank of Canada. The signal would be very clear.

I think if the situation developed where, as my colleague says, the registrar sought a meeting with the board of directors and made his position to it, if that clout did not work, certainly it would work very quickly if public interest directors were to resign from the board simply because of that question. In the real working world I think you could perhaps solve the problem that way.

But I certainly would ask you to consider seriously the removal of this recommendation about advance or prior approval.

Mr. Crosbie: May I go back to one of your earlier comments about the trust companies and the nature of the entitlement to trust powers? I believe in the proposal the indication is that the trust company currently exercises only very

limited trust powers in Ontario--I think administering registered retirement savings plans. I am not sure whether your position, Mr. Renwick, was that you must be committed to going to the full ETA administration if you want to retain the name "trust company" or whether--

Mr. Renwick: There are always questions as to whether the exception governs the rule or otherwise, but I certainly start from the proposition that if you look at the history of the trust companies since the war--that is, the Second World War--

Hon. Mr. Elgie: We did not assume you were around for the first one.

Mr. Renwick: --you will see that the move from the trust business as such into the financial intermediary business had the immense attraction to people of having a pool of money available by way of stock in trade or inventory to deal with, and they did it at the expense of the trust part of the business.

I would certainly like to see every trust company that is incorporated in the future and all of the existing ones be required to develop a plan by which over a period of time they would reach certain goals and objectives with respect to the estate, trust and agency business. Whether you achieve the goals and all the rest of it depends on the business market and a lot of other things, but there must be positive obligations to move into that field or we will find that gradually this essential part of the trust business will just continue to shrink or become the preserve of very wealthy people who want to have that kind of facility available.

Mr. Crosbie: Would the corollary of this then be that a company that does not wish to go into the ETA area would become a loan corporation with limited agency or trust services?

3 p.m.

Mr. Renwick: I think that would be one possible road you could go on, and then, as you say somewhere else, a transition period into the trust concept, which would apply both to their deposit and to their guaranteed investment certificates, but in the initial instances do it by way of the loan corporation.

Our guests here this afternoon probably are an exception to that rule because of the nature of the credit union movement and the niche they are filling in Ontario. I have no idea what your future plans are or whether, if the co-operative movement were as strong in Ontario as perhaps it is out in Saskatchewan, there might be other services provided by this company in Ontario.

By the way, they are going to have to have a substantial increase in staff in about another hour or so when the Minister of Finance brings down his budget on the question of registered retirement savings plans.

Hon. Mr. Elgie: Time to take time off.

Mr. Cassidy: I have a couple of questions. My first question is for the ministry.

There are a number of specific questions which are fairly technical. Rather than our going through them all here in evidence, would it be possible for the ministry to give us a short memorandum about how the white paper as proposed would respond to a number of the questions raised by the folks from Co-operative Trust?

Mr. Crosbie: I assume the trust company has no objection if we copy our reply to its paper for the committee.

Mr. Lipsett: No, that would be fine.

Hon. Mr. Elgie: You will be coming in anyway, will you not?

Mr. Renwick: They are going to meet with your people, in any event.

Mr. Cassidy: A specific one is the fact that the people who are involved as directors and so on generally have some relationship with the member credit union which is also providing services for Co-operative Trust, or rather selling services, handling RRSPs that come from Co-operative Trust and that kind of thing. Does that create some problems in terms of the framework proposed in the white paper?

I gather from your presentation that the answer is, "Yes." I am not sure whether those are problems that can be overcome or whether there are problems which could basically jeopardize the nature of the business in Ontario if it were to be--

Mr. Lipsett: As I mentioned, in the federal draft act there was the specific prohibition that a director could not be someone who is an officer or director of a competing financial institution, but they made an exception. I believe the exception is specifically in there for Co-operative Trust.

Mr. Cassidy: Of a competing financial institution?

Mr. Lipsett: Yes, competing. You could conceivably say that in some ways a credit union is still competing with Co-operative Trust because they are two financial institutions that do mortgage lending, take in deposits and have RRSPs, that type of thing.

Mr. Cassidy: I see.

Mr. Lipsett: That was our concern. The federal proposal made an exception for that. One of our concerns was whether the provincial act would also take into consideration that unique relationship. The majority of our directors right now are managers or senior officers of credit unions and some centrals. That is for most of our 15 directors.

Mr. Cassidy: What you are saying is the credit unions

may well be taking money on investment certificates, on term deposits of some kind, as you are. You operate independent, self-standing branches in addition to operating through the credit unions, do you not?

Mr. Lipsett: That is right. We offer our services directly to the public, but we try to concentrate most of the services we offer through the credit unions. We still offer services directly to the public through our branch offices.

Mr. Cassidy: This means that in Ottawa, for example, you may be taking in deposits, but also providing certain services to the Civil Service Co-operative Credit Society Ltd. just down the road, which is also taking in deposits on its accounts.

Mr. Lipsett: That is true.

Mr. Cassidy: I understand.

I understand Mr. MacIntosh of the Canadian Bankers' Association has given a speech endorsing the New Democratic Party's policy on the trust companies.

Hon. Mr. Elgie: In bed with the banks; that is pretty shocking, I will tell you.

Mr. Boudria: Your corporate welfare friends.

Mr. Cassidy: The Toronto Sun just called.

Hon. Mr. Elgie: It will not look very good on your campaign brochure.

The Vice-Chairman: Go ahead with your question.

Mr. Cassidy: It appears to me that one of the rationales for the degree of regulation proposed in the white paper is that clearly there is a potential for abuse, as we have seen in the trust company area. That potential is there particularly because one or two people can gain control of a trust company and then can run it as if it was an entrepreneurial venture, rather than a staid and secure trust company.

The provincial proposals continue to allow one or two people to control a trust company, but put in a fairly tight framework of regulation in order to prevent the kind of thing that happened with Seaway and Greymac from happening again.

As far as Co-op Trust is concerned, on your own account, do you see any handicap to your business or any particular reason to be opposed to a 10 per cent limit on the ownership of a trust company in Ontario?

Mr. Gebert: When that proposal came out in the federal white paper it was discussed by our board. It is very difficult for us to agree to it, because, if you look at our situation in Saskatchewan, we have some shareholders in central Saskatchewan who have in excess of 10 per cent of Co-op Trust shares.

After discussing it at greater length, we do not think just the fact of ownership in itself would control the problems you had in Ontario, because you could still get collusion. I think regulation, inspections, follow-up audits and controls should catch your major problems.

Mr. Cassidy: But you are concerned in your brief about the excessive regulation proposed in the white paper.

Mr. Gebert: That is right.

Mr. Cassidy: If the price of having a less oppressive regulation was a 10 per cent rule--bearing in mind, of course, the problem of collusion, which is always a problem; none the less, a 10 per cent rule makes it a hell of a lot more difficult to have collusion--and if, as my friend Mr. MacIntosh suggested, there were a few years of moving towards that so it did not have to be all at once, what reaction would you have to that?

Mr. Gebert: It may cause problems for us, because we are trying to have the various tiers of organizations in the co-op system--have the ownership follow the lines of how they elect their directors.

For example, back in 1980 when Co-op Trust had some problems, we restructured the board and the delegate system. It was more in the form of where the majority of shares were held. Saskatchewan elects six directors through the central. One of the long-term objectives is to try to get the control structure, the ownership, headed in the same direction as the voting structure.

So we would run right into conflict with the 10 per cent rule. We would have to come and ask for a waiver on it. It is pretty difficult for us to speak against being in favour of control of ownership and, on the other hand, come hat in hand and ask for a dispensation, if you want to call it that. I do not know if it has been proved that is a solution.

The other point we would like to make is with the credit union system, even though the control may be at certain centrals and we deliver services, the credit union system is widely held. I would say is as widely held as you could possibly get it with one vote per member.

Mr. Cassidy: Yes.

Mr. Gebert: That trickles up into the second and third tier organizations.

Mr. Cassidy: You are saying Saskatchewan would be entitled to 30 per cent representation of your shares.

Mr. Gebert: As a matter of fact, 70 per cent of the equity is held in Saskatchewan right now, because Co-op Trust was incorporated as a provincial trust company in Saskatchewan and then went federal.

Mr. Cassidy: But that 30 per cent can easily represent 200,000 or 300,000 people in Saskatchewan.

Mr. Gebert: That is right. Actually 400,000.

3:10 p.m.

Mr. Cassidy: To some extent, for your company, it may be a matter of how that equity is distributed and voted.

Mr. Gebert: How do you interpret the ownership of that 10 per cent, 20 per cent or 30 per cent? Who really holds that? In our system, we feel it trickles right down to the membership.

Mr. Cassidy: I have a final question to the ministry which is related to the point that was raised by the witnesses from Co-operative Trust about the appointment of the chief executive officer and the chief financial officer. Has there been experience in some of the problems we have had recently where people who have become the CEO or CFO of a trust company would have been knocked out if there had been the rule that the registrar had to approve their appointment?

Mr. Crosbie: Yes.

Mr. Cassidy: Can you give particulars?

Mr. Crosbie: No.

The Vice-Chairman: Mr. Cassidy, if I may rule on that, I think it would be a little difficult at this time.

Mr. Cassidy: Can I ask around the question in this way? Has this happened once or more than once?

Mr. Crosbie: Charades.

Mr. Renwick: On a scale of one to 10.

Mr. Breithaupt: Have you had concerns on a number of occasions?

The Vice-Chairman: I think at that point--

Mr. Cassidy: I am sorry, I want to pursue this, because--

Mr. Breithaupt: --of how important it is.

Mr. Cassidy: That is right.

The Vice-Chairman: If you would, could you rephrase the question to say something such as, "Have you had in the past concerns" or whatever? I do not want to word the question for you.

Mr. Cassidy: Have you had concerns such as this on more than one occasion?

Mr. Crosbie: Yes.

Mr. Cassidy: Where you have had concerns when something practical and specific that you can think of has come up, would certain qualifications written into the legislation, such as more than a certain number of years of relevant experience and the usual things about no criminal record, have served to have kept these people considered undesirable out of those positions?

Mr. Crosbie: Working from our experience base now, we could go back and write regulations that would have dealt with the situations we had before us, but whether we could predict the next one, I am not sure.

Mr. Breithaupt: Could you have tied things up so much that it would have been an impractical definition of what a CEO or a CFO should or could be?

Mr. Crosbie: I was taken by the observation made in the presentation that someone totally unrelated to the trust industry was hired as a CEO because they had certain other abilities. Whether we would have contemplated that sort of situation, I do not know.

Mr. Cassidy: I can see problems, even if you say they have to have had at least five or 10 years of trust experience. That is very narrow. If you say financial institution experience, then you might get a banker. If you say relevant business experience, then Leonard Rosenberg comes along and he has a tremendous amount of relevant experience.

Mr. MacQuarrie: So would the godfather.

Mr. Cassidy: That is right. So would the godfather.

Mr. Breithaupt: On that happy note--

Mr. Gebert: Can I just make a quick comment on that point?

We have an inkling of why that proposal is in. But one of our concerns, in addition to the fact that the responsibility should lie with the board of directors, is what happens if every province puts this legislation in? Do we have to clear 10 provinces plus the federal government to get approval? It could make it very difficult.

Mr. Cassidy: Just the feds and Ontario.

Mr. MacQuarrie: Looking at this question of the CEO and some sort of control by the ministry over who that might be, it is my understanding, if I recall those excellent presentations regarding pre-incorporation proceedings, and you can correct me if I am wrong, that at the present time, people seeking to incorporate a trust company in Ontario come to you and lay out, among other things, the qualifications of the various people filling the various offices, the shareholders and all the rest.

Mr. Thompson: That is correct, on a new incorporation.

Mr. MacQuarrie: On new incorporations. Where we ran into trouble was the prospect of changes in ownership.

Turning now to the Co-operative Trust Co. of Canada, and recognizing there are various means by which a person can become skilled in the financial and investment fields and in the trust field, I do not see too much to be concerned about in a company coming to the registrar and saying: "This is the man the board of directors proposes as chief executive officer and he has this experience. We have looked into his background very carefully. He has been with the co-op movement for X number of years, since he was a little boy, and he has served us well." Can you see why any person like that should be disqualified?

Mr. Thompson: Not on those grounds, I could not. He is familiar with dealing with the public in the handling of deposit-taking--

Mr. MacQuarrie: Looking at Co-operative Trust itself, I take it from what you say that your main concerns with the white paper arise out of the rather unique nature of your organization. I would like to look at that for a moment.

You indicate you have about 320 credit union members in Ontario. You indicate your trust for a lot of them is for registered retirement savings plans, registered home ownership plans and the rest. Do some of them handle their own RRSPs?

Mr. Gebert: Some have gone authorized issuer. It has recently been changed in the Income Tax Act. We have one or two.

We have three levels of service. One is a situation where a small credit union does not want to offer the long term, so we will take it into our general account. Then we have the ones that do not want to do accounting, so we provide trust and accounting services. The third level is providing trustee responsibility and they do their own accounting. There are some that have gone on their own and have taken over the trustee functions.

Mr. MacQuarrie: Does any of your business, for example, include mortgage lending?

Mr. Gebert: Yes.

Mr. MacQuarrie: Do you mortgage-lend to member co-ops for buildings, structures, office buildings and the rest?

Mr. Gebert: In certain situations, yes.

Mr. MacQuarrie: Do you check into those individual co-ops, credit unions, caisses populaires, or whatever as to their ability to handle their situations?

Mr. Gebert: Yes.

Mr. MacQuarrie: I am leading up to this quite deliberately, because over the past few years, during the very volatile financial situation, a lot of credit unions and caisses got into a situation where the spread they had anticipated was not there. In fact, the reverse was true. They were continually running in the hole and in a loss position by the nature of their business, with no suggestion of any defalcation, just in the ordinary course of their business operations.

Something like this raises some trouble in my mind as to connections and control. You were talking about lower levels--one vote, one shareholder, and up to the second and third tiers, and so on. If my understanding is correct, that mechanism can serve to concentrate control.

Mr. Gebert: I would agree the possibility exists. However, when you are looking at our organization, it is widely held.

3:20 p.m.

Mr. MacQuarrie: But the fact that it is widely held leads to the prospects of pyramid consolidation.

Mr. Gebert: The pyramiding effect. Hopefully, you are working with the system. One thing that has come to the forefront over the past few years is that the system does not put all its eggs in one basket. For example, in our lending we take part of a mortgage and some is central. If a problem does happen, it is all in the co-op sector. We have identified situations like that. We want to avoid them; they have to be avoided. You want to keep your exposure down.

Of course, we have all learned over the past two or three years. It is something new. The co-op sector was not the only one that experienced financial problems.

Mr. MacQuarrie: I know but it came home vividly to me in one situation.

Mr. Gebert: Hopefully, you always pick up a little and learn more as you go along. Certainly we are very careful; we try to be anyway. But going back to your questions about qualifying the co-op for a mortgage application, it must meet the same criteria, whether it is a private company or an individual. It is not rubber-stamped.

Mr. MacQuarrie: Do co-ops get any preference at all?

Mr. Gebert: Not in that way. For example, if you were dealing with a retail co-operative out west, federated co-operatives you had close liaisons with would be involved and they would give a moral guarantee or something. Let us face it. They have expertise in the retail business in terms of evaluating the credit. We work very closely with the second-tier and third-tier organizations. Through the central's stabilization funds, there are very close relationships.

Mr. MacQuarrie: What prompted my question with respect to control is, by looking at some of the sister organizations or related organizations, at least we will have an opportunity to see what sort of changes in management occur at what rates. You will find it is very, very slow and in many cases almost a sinecure. That is why I wonder about how effective the lower level is in some of these instances and what voice they have. Theoretically, it is a great concept. I am not questioning or challenging it at this point. I am just raising some questions. Thank you very much.

Mr. Breithaupt: I have nothing further, Mr. Chairman.

Mr. Cassidy: I just wanted to go back to the question I was asking the ministry people. If you have the right to approve or disapprove the appointment of a chief executive officer, what standards would you apply? To put it another way, how do you know you have a good chance of getting it right when you are trying to second-guess the decisions made by a particular company and by a board of a particular company?

Mr. Crosbie: I think the answer to that is the level of acceptability is somewhat below the level of excellence. Under most circumstances, you would have no difficulty qualifying the type of person put forward as basically acceptable. Such a qualification does not assure that this person is going to turn the company around if it is in financial difficulty or he is going to do a first-class job, but at least you would be able to say there is no apparent reason why he should not be the CEO.

Mr. Cassidy: Is there a precedent in other legislation in Ontario for government approval of the appointment of an officer of a private company?

Hon. Mr. Elgie: Just in the case of the Toronto Stock Exchange with their approval of two public members.

Mr. Cassidy: I am sorry?

Hon. Mr. Elgie: The TSE.

Mr. Cassidy: Is that done by government?

Hon. Mr. Elgie: They nominate public governors, too, and the government has the veto power.

Mr. Cassidy: Over the governors but not over the management director?

Hon. Mr. Elgie: No, I do not think they do.

Mr. Crosbie: I suppose there is a parallel such as under liquor licencing where you look at the integrity and record of the individual applying for a licence.

Mr. Cassidy: Does that apply, however, where a licensee, let us say--

Mr. Crosbie: Once the licence is issued, I do not think they go back. If they want to hire a new manager or something like that, I do not think there is a review at that time.

Mr. Cassidy: Okay.

Hon. Mr. Elgie: That is a difficult area.

Mr. Cassidy: I am asking questions but--

Mr. Cassidy: I realize I am asking questions, but this is the dead hand of government, and I am just trying to look and see whether it should go ahead or not.

Hon. Mr. Elgie: It is not something government wants to do with any great glee.

Mr. Cassidy: I am open-minded on it.

I would like to ask our friends from Co-op Trust a question. The procedure as described to us for the incorporation of a trust company in this province would include a suitability test in looking over the people who are going to run the young trust company and a certain amount, basically, of day care for the infant company until it grows up and can take on more responsibilities and so on. Does your objection to approval of the appointment of the chief executive officer extend to the process where there is some greater degree of oversight at the time a trust company is becoming established for the first time?

Mr. Lipsett: That would not be a problem because, if a trust company is just being established, I could see some merit in having the registrar have some say in what type of management that trust company is going to have, who is going to be on the board and that type of thing. But if a company that has been established over the years had to go to the registrar every time it wanted to change or every time there was a change in CEO, to us that does not seem practical at all.

One of the problems would be, for example, that the last time we did change--I mentioned the gentleman we took on in 1980--our board hired him with input from the major shareholders, and they had a pretty good idea of whom they wanted. We were in a crisis situation and they terminated our previous CEO. We had to get someone in place very quickly, and they chose this person, approached him and put him in place within three or four weeks. If we had had to go to the authorities to get approval, mechanically it would have taken four months to get approval. We could not wait; we were in a position where we were overborrowed and we had to get things back on line and all that. He came in and took charge, and we got the thing going.

Mr. Cassidy: What would your opinion be if Ontario were to say that, in addition to establishing special oversight over a fledgling company, it would also look at the suitability of senior management in the case where a trust company incorporated in another jurisdiction out west or down east was seeking to gain permission to operate in Ontario?

Mr. Lipsett: Oh, I think it may be natural to find out what their expertise is.

The Vice-Chairman: Mr. Gebert, do you have a comment you wish to make?

Mr. Cassidy: So you see a distinction then between the situation of a trust company that either is new or has registered elsewhere and is coming into the province, on the one hand, and the continuing oversight over the appointment of senior officials for a company already established or operating here, on the other hand?

Mr. Gebert: Just to comment, I would think that when the co-op sector goes into a new sort of business or relationship it would want some outside expertise with respect to whom it is going to choose to head its company, particularly if it have had no experience in it. I think that is a natural sort of relationship. Where you have an established company and you want to make a change in the situation Mr. Lipsett outlined here, it could have caused a problem.

The Vice-Chairman: Mr. Crosbie has a comment, Mr. Cassidy.

Mr. Crosbie: I wanted to make two comments, Mr. Chairman. I think the discussion here has been very useful, and it has drawn attention, I think, to two areas. One is the federated nature of the country. In the United Kingdom in certain of their regulations they have approval of CEOs, but there is no problem because it is just the one country that does it; in some of the American states, I think, they have this type of approval for the state financial institutions. But I quite concede that when you start talking about having to get the approval of maybe 10 provinces and the federal government, it creates an administrative problem.

The other aspect I would like to comment on is Mr. Cassidy's comment about where else we intervene in this way, and it got me thinking. I just throw this out. I know it is perhaps a bad analogy, but if you were running a used car business you would have to get approval from us for a used car salesman because we license the salemen. We license investment dealers. We license insurance salesmen. But when you put the chief officer into a trust company, the suggestion is that there is no need for control. You might be quite right.

3:30 p.m.

Mr. Cassidy: It is part of the class system; that is all.

Mr. T. P. Reid: I am glad you were smiling when you said that, but I am not sure you meant it.

Hon. Mr. Elgie: The banks will not like that remark. You have lost the banks already, Michael.

Mr. Boudria: Short relationship.

The Vice-Chairman: Do you have any further questions?

Mr. Cassidy: I think the byplay interrupted what I was going to ask Mr. Crosbie. Since 1982 the ministry has powers which it lacked before, or had not sought, to review the suitability of new owners of a trust company taking over from the gang that is in charge. Is that not correct?

Mr. Crosbie: That is correct.

Mr. Cassidy: Surely where you have had concerns--to go back to the euphemism about the appointment of a CEO--it is because you also had concerns about the gang that was running that company. Is that not correct?

Mr. Crosbie: I do not know whether I could put it quite that specifically. I know on one occasion they both arose at the same time. I do not know whether we would have changed our position if they had changed one or the other.

Mr. Cassidy: It seems to me the regulation arising from the oversight over the appointment of a CEO may be getting to the symptom rather than to the disease. If the power is exercised effectively to check out transfers to make sure companies do not get into the wrong hands--Bob MacQuarrie's godfather or whoever it is--then the problem of the CEO appointment from unsuitable people coming along should not arise.

Mr. Crosbie: I think that was one of the observations the other day--I would make it subject to Mr. Renwick's comment about public members on the board of directors. In your other argument about dividing the ownership, it appears the one group that seemed to have an ability to survive is management. It seems to me if you are advocating that the control over management be dissipated through spreading shareholding among a large number of people, then there is even more reason to have some mechanism to review who management is.

Mr. Cassidy: Is there a precedent for that in the federal system where they do have control over ownership in the banks?

Mr. Crosbie: I do not know what the regulation is.

Mr. Cassidy: I do not believe there is.

Mr. T. P. Reid: Mr. Crosbie, who is liable to cause the problem, the owners or the management? Everything we have heard is talking about a prudent approach to this business. The managers are excoriated--Hansard will get the spelling right--for being too conservative.

The Vice-Chairman: Who can be too conservative?

Mr. T. P. Reid: The man to your left, certainly, is not accused of that on occasion.

Hon. Mr. Elgie: Do you want my bleeding heart right now?

Mr. T. P. Reid: Mr. Cassidy is getting to the heart of the problem, but what problem? For instance, do we have to worry about these gentlemen going out and buying a building and putting a mortgage on it at 110 per cent of its value, or do we have to worry about a manager going out and doing that? In this case, I do not think we have to worry about them. Also, in most cases I do not think we have to worry so much about the CEO as the instances where one person or maybe even two or three have control. We must be concerned if they say to the CEO, "You are going to do this if you want to hold on to your job."

I am not making any policy statement, but if we are saying we want prudent, conservative management, it seems to me the way to go about it is through the ownership of the company. This would be better than vetting all the managers or CEOs who come down the pike.

Mr. Cassidy: The last bank that failed was 63 years ago.

Mr. Crosbie: I do not think you can really generalize on this. I think you can look around and find organizations where the CEO has made errors and others where perhaps the shareholder controlling the company has caused the error. I do not think either of them are lily white.

The Vice-Chairman: May I just interject? Mr. Cassidy, are you finished with your question?

Mr. T. P. Reid: He is thinking of his next question.

The Vice-Chairman: Mr. Reid.

Mr. T. P. Reid: The point is that we are here for a particular reason. You, Mr. Chairman, and the minister whispering into your ear, which he has a perfect right to do, do not want to talk about the three instances that have brought us here. The three instances that have brought us here include the fact that it was the companies that were owned wholly or controlled by one person. It was not the chief executive officers who got us into this position, it was the ownership. We have been around this before.

The Vice-Chairman: Since you drew me into your comment, Mr. Reid, I might assure you that no one has been breathing or whispering in my ear. I have been making those decisions. As I suggested to the officers of the court this morning who are members of this committee, I looked to them for guidance. I said that very clearly.

Mr. T. P. Reid: Not one of them has raised an issue, except my friend Mr. MacQuarrie, whose wisdom I value very highly. But that is not the issue. The point is that in the instances that have brought us here today, it was the problem of ownership and not the problem of management that got us here.

Mr. Crosbie: With respect, I think we attempted to address that issue in the white paper. We came to the conclusion

that the problems that arose in the three companies, which might arise elsewhere, could be dealt with more effectively through the proposals we have made rather than through the shareholdings. Although the shareholding obviously became an issue because it is the other popular way of doing it, I do not think it is fair to say we have ducked that issue. I think we have discussed it at some length in the last couple of days.

Mr. T. P. Reid: I am not arguing that.

Hon. Mr. Elgie: --conflict of interest issues, and there are various ways of attacking it.

Mr. T. P. Reid: Has there been any instance, whether it was Re-Mor, Astra, Atlantic Acceptance or anything else, where the problem was caused by the CEO rather than--

The Vice-Chairman: That was a previously asked question, Mr. Reid. It is a matter of record in Hansard.

Mr. Lipsett, Mr. Gebert and Mr. Feron, I do thank you very much for appearing and giving us the benefit of your wisdom here today. I understand you have also set up some future meetings with the ministry.

There being no other witnesses to hear this afternoon, the committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 3:38 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

WEDNESDAY, FEBRUARY 15, 1984



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
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MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
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Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library

Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

Kronis, J. N., Barrister

From the Institute of Chartered Accountants of Ontario:

Bones, J. R., First Vice-President; Chairman, Committee on Loan
and Trust Corporations; Ward Mallette Chartered Accountants

Denman, J. H., Committee on Loan and Trust Corporations;
Accounting Standards Director, Canadian Institute of
Chartered Accountants

Finch, R. R., Committee on Loan and Trust Corporations; Price
Waterhouse

LaFlair, P. G., Director, Professional Services; Committee on Loan
and Trust Corporations

Selley, D. C., Committee on Loan and Trust Corporations; Auditing
Standards Director, Canadian Institute of Chartered
Accountants

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 15, 1984

The committee met at 10 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: Good morning, gentlemen and ladies. I see a quorum. On behalf of the committee I would certainly like to welcome back our clerk from his sick bed. We certainly appreciate having you back again, Doug.

The first witness this morning will be Mr. Jules Kronis, with exhibit 30. You may proceed, Mr. Kronis.

JULES KRONIS

Mr. Kronis: Mr. Chairman, members of the committee, my name is Jules Kronis. I have submitted a written brief which the committee has before it. Perhaps I could take the committee through the brief summarizing some points and expanding on others.

The brief is intended to reflect my comments on the proposals with the hope that further improvements can be implemented. The minister and the staff of the Ministry of Consumer and Commercial Relations are to be commended in reacting to the recent loan and trust company situation. Now the foundation must be put in place to reduce the risk of such situations occurring again.

For several years I have acted as solicitor for dozens of investors attempting to recover substantial sums of money they have lost in various syndicated investments, including Argosy. I have not acted for any of the financial institutions involved. I have had an opportunity to meet face to face with investors, to listen to them as they recount their tales and to review documents.

From my experience in acting as solicitor for investors who have lost money in recent situations, there is no classic profile of depositor or investor who has been the most vulnerable, but certain attributes mark the most pathetic cases. These appear to be as follows:

1. Persons on fixed incomes who respond readily to an extra amount of interest offered.

2. Persons who have little knowledge of the financial marketplace and receive a lump sum, such as money from an estate or divorce settlement. These people are often especially bitter because the loss of the money adds to the personal grief they have already suffered in the circumstances from which the sum of money originated.

3. Persons who have transferred their registered retirement savings plan, pension funds or nest egg in life to the new investment that has gone sour on the advice of a professional or financial adviser on whom the investor relied. Often the investor becomes paranoid about professionals and advisers, which further complicates his ability to seek a remedy, because he has diminished faith in the professionals who, in the normal course, he would engage to seek compensation.

4. Persons who also invested their relatives' money and suffer matrimonial or social distress as a result.

5. Persons who simply responded to advertisements and thought their money was safe because the institution was a member of Canada Deposit Insurance Corp.

It is proposed on page 15 of the proposals that a separate investigative unit be established. Page 3 of my brief deals with the administration of investigations.

The composition and recruitment of a separate investigative unit deserves special attention to give the unit the capacity to carry out its duties in a meaningful way. A program ought to be developed whereby investigators can be recruited for a limited period of time from the professions and the financial industry. Persons should also be sought from investigative branches of various levels of police forces, such as the Royal Canadian Mounted Police and the Ontario Provincial Police, for limited periods of time.

Since the investigative unit will be different from the examination branch, emphasis should be on hiring people who have had experience in auditing, analysing and working back through financial situations. The investigative unit should have the ability and the capacity to conduct inspections of records on the premises of the loan and trust corporations, particularly in relation to following up complaints and making spot audits.

The investigative unit ought to be composed of persons who are motivated and who are self-starters. In the recent investigations, particularly after January 7, 1983, the staff appeared to have a new attitude when joined by personnel from the Royal Canadian Mounted Police and other law enforcement agencies. Some of the present staff have had experience in other agencies and were pleased to be joined by former associates in the tasks allotted.

In summary, while one can appreciate the difficulties in relation to pensions, collective bargaining agreements and other attributes of employment, an exchange program in this area merits consideration. The chairman of the Ontario Securities Commission coming in and out of government for a two-year period is an example of this kind of measure.

Carrying on business in Ontario: One of the objectives of the proposals is adequate protection of the depositors. It is submitted not enough consideration has been given to the ramifications of similar names of licensed and unlicensed

corporations which are connected by some degree of ownership or common directors and officers. The unlicensed corporations with similar names can be used to either knowingly or otherwise mislead or confuse the public.

A loan or trust corporation having the privilege of being licensed under the act should not be permitted to consent to the incorporation of a corporation with a similar name without authorization by the registrar or other administrative official. The public relies on the supervision of licensed loan or trust corporations and can be misled by corporations with similar names which are not regulated or which may not be members of Canada Deposit Insurance Corp.

The holding corporation may incorporate subsidiaries to syndicate mortgages or conduct other financial activities which unsuspecting members of the public may mistake for corporations regulated by the act. This is especially so where both the licensed and unlicensed corporations operate out of the same premises with similar personnel.

While the word "trust" in a corporate name is currently limited only to those corporations licensed under the act, there is now no such provision, that I am aware of, for similar words or parts of words such a "trusco." Consideration should be given to limiting the use of deceptive similar names of corporations which can be used to mislead the public. It is submitted that these concerns be reviewed with the director of the corporations branch with a view to achieving these goals without creating administrative difficulties.

Names of corporations can be confusing to the public, particularly as they may lead to depositors or investors misinterpreting their legal rights concerning protection of their money. The proposals are silent on the use of similar names. I would like to give you some examples of corporations with similar names from information provided to me and from advising clients in trying to recover a substantial sum of money involving a matter, which, I understand, is presently under investigation by the authorities.

Dominion Trust Co., spelled in full, is the first corporation. The second corporation is Domtrusco Developments (Toronto) Corp. To the best of my knowledge, it is not licensed and it is a regular Ontario Business Corporations Act corporation. The third corporation is Dom-Trusco Developments Ltd., again not licensed, again a regular Ontario Business Corporations Act corporation.

When this information was provided to me the president of Dominion Trust was Nigel Stephen Axton; vice-presidents of Dominion Trust were Thomas M. Sheppard and Donald A. R. Sheldon.

Domtrusco Developments (Toronto) Corp.'s secretary was Thomas M. Sheppard. The company name was changed on September 23, 1982, to Shyelle Developments Ltd.

Dom-Trusco Developments Ltd.'s president was Nigel Stephen

Axton; secretary, Harry Cravit; assistant secretary, Paul Gallagher. This was information, to the best of my knowledge, that was provided to me about a number of confusing corporation names.

I now turn to page 5 of the brief about conflicts of interest. The professional societies will no doubt be dealing with this matter in more detail. However, from my experience I recommend consideration of the following measures.

1. Professionals who become officers of loan or trust corporations ought to be required to take steps in their practices to ensure they are available to carry out their duties with the loan and trust corporations. In the case of lawyers, the law society deals with rule 6: "The lawyer who engages in another profession, business or occupation currently with the practice of law, must not allow such outside interests to jeopardize his professional integrity, independence or competence." I submit to you that the loan and trust corporations field is one that this committee should be looking at in this area, to protect the corporation, the depositors and the investors.

2. The physical premises of loan and trust corporations ought to be self-contained and separate and apart from the offices of other businesses, including legal and accounting firms.

3. The records of loan and trust corporations ought not to be lodged in legal firms, accounting firms or other businesses. Similarly, these records ought not to be recorded and maintained by personnel who are employed by legal firms, accounting firms or other businesses.

4. Lawyers ought not to have signing privileges at the same time for both the trust accounts of their legal firm and the accounts of the loan and trust corporations which advance moneys or which accounts deal with trust funds.

5. Where a lawyer is a director or officer of a loan or trust corporation and that lawyer or a member of his legal firm sits on the committee which approves a mortgage, the legal firm of which that lawyer is a member ought to be prohibited from acting as solicitor on that mortgage.

6. In addition to the proposed measures for loan and trust corporations in respect to finders' fees or commissions, the professional societies ought to consider the responsibilities of professionals to their clients where the professional receives finders' fees or commissions from the loan and trust corporations as well as others. To the best of my knowledge, many of the syndicated mortgages and multiple-unit residential buildings were put together by professionals whose incentives for so doing were any or all commissions, finders' fees and other remunerations, at the expense of and without disclosure to their clients.

10:20 a.m.

7. There are inherent dangers in one legal firm acting on the MURB, acting as a depository for the investors' funds in the MURB, and then acting on the mortgage on the MURB property. The

loan and trust corporations ought to use prudence in engaging legal firms which have a vested interest, if not a conflict of interest, in the viability of the project when viewed as a whole. For the same reasons, the personnel of the loan and trust corporations who consider the mortgages ought not to be able to gain personally from the outcome of their decision.

Chapter 11 of the Morrison report sets forth chapter and verse of problems in this area. I yield to the professional societies, but this is information which I feel should be brought to your attention.

Page 6 of the brief deals with business and powers of the proposals.

The proposals recognize that the loan and trust corporations have responsibilities to their depositors and those who deposit funds with them. On the one hand, a person cannot be adequately protected from himself. On the other hand, there are measures which should be considered to reduce the risk of depositors being confused, misguided or deceived.

In respect of the nature of notice of Canada Deposit Insurance Corp. insurance, it is submitted it is not sufficient simply for a loan and trust corporation to advertise or give notice that it is "a member of CDIC." The proposals recognize that all corporations should be required to make it clear to depositors the extent to which their money is protected by CDIC. In relation to loan and trust corporations, consideration should be given to the manner in which adequate notice of CDIC insurance or even lack thereof is given in relation to specific certificates and investments, not just the institution itself.

A certificate might be required to set forth that "this investment is not insured by CDIC" to rebut the implication by the corporation that just because it is a member of CDIC, all of its investments are insured. A full review of the matter might reveal that indicating that the corporation is a member of CDIC is itself misleading. Membership does not guarantee the investor that his particular investment is insured.

I can give the committee, if it wishes, examples of this after I have presented this brief.

Finally, I draw your attention to section I of the proposal, financial records and reports. The Loan and Trust Corporations Act ought to provide that the records of the corporation, including the records for investments in which the corporation is sole trustee or fiduciary, be kept on the premises of the corporation. A loan or trust corporation should not accept a fiduciary duty if it does not have possession of the records relating to the investment for which the corporation has undertaken the fiduciary duty.

To the best of my knowledge, not only was this probably a problem in the Astra/Re-Mor situation, it occurred in the relationship of London Loan Ltd. and Argosy Finance Co. Ltd., with London Loan being licensed and Argosy not being licensed. From my

vantage point, this is an example of an unlicensed corporation trading on the goodwill created by the rights and privileges of a licensed loan corporation.

Next, I draw your attention to section J of the brief referring to enforcement in the proposals. There is no authority under the act, to the best of my knowledge, for the registrar to take action on behalf of depositors or investors who have suffered losses as a result of breaches of the act by directors and officers of a loan or trust corporation. Consideration ought to be given to whether or not the registrar should have powers of this kind and if so, the nature of such powers. The proposals are silent on the subject.

Once the breaches are discovered by the authorities and the process of enforcing the act begins, the directors and officers of the loan and trust corporation which should be in a fiduciary relationship with depositors or investors often come into an adversarial relationship. The depositors or investors, having already lost money, do not have the resources necessary to hire lawyers and to seek compensation from the loan and trust corporations and from the directors and officers accused of wrongdoing. Even if the resources are available, lawyers and other professionals and advisors do not have what is required to marshal the facts and properly advise their clients. The task is often monstrous.

The investors and depositors do not appreciate the lengthy time periods required for the registrar or the crown adequately to prepare cases for court, and often resent what they perceive to be lack of action on the part of the authorities.

Some investors and depositors become frustrated and seek political action rather than compensation through the legal system. Consideration ought to be given to procedures by which the depositor or investor can be assisted by the authorities.

I trust this brief and my comments will be of assistance to you. I am in your hands if there are any questions.

Mr. Breithaupt: I have one with respect to the use of the word "trusco." I felt a number of words were not available even under incorporation by right, traditional words such as "royal" or "bank" or words that were peculiar to certain professions, however it might be.

Since we have seen a number of corporations develop superior holding companies which now have words like "trustco" as part of their name, and have added various powers or other situations, are words like that or similar words now on any proscribed list? It would seem they should be. People start using these combinations to add new terms to the financial world.

Mr. Crosbie: I am not aware of any additional lists other than the one set out in section 175 of the act. You mentioned words such as "royal" and words of that type relating to associating oneself with the crown. I do not believe the term "trusco" has been proscribed in any sense.

Mr. Thompson: No, it has not. I will say that the genesis of that term came from the major companies that were under the federal regulatory process. As a matter of practice we have asked that, if there is a holding company of a trust company, and if there is any sale of that--if there is a divestment--the term "trustco" should be lost in the process. There should be a change of name.

Mr. Breithaupt: That covers the word "trustco." We are having another play on words, or aberration as Mr. Mitchell said, "trusco," which is not a word in any dictionary but is one of those terms which sounds as though it has that cachet, as we would say in Waterloo. That is something that should be attended to.

10:30 a.m.

Mr. Crosbie: I would draw the committee's attention to the draft bill that was circulated by the former minister, Mr. Walker, which had proposed allowing the use of the term "trust" in connection with a subsidiary of a trust company where the trust company was guaranteeing the performance of the subsidiary.

Mr. Breithaupt: That may be suitable. If there is a complete guarantee the security is no different than that issued by the original trust company and may benefit from insurance coverages or other responsibilities. However, in this instance the use or creation of a similar trendy kind of word may lead to some confusion and some expectations and the purchaser is allowed to believe whatever he or she wants to believe.

Mr. Crosbie: Yes.

Mr. Breithaupt: I think that circumstance is peculiarly worthy of consideration by the ministry. I think we should be attending to sorting out any points that would lead to confusion.

Mr. Gillies: Perhaps seeing if there is a mechanism whereby a guarantee is enforced wherever any permutation of the word "trust" is used--or something of that sort.

Mr. Breithaupt: Something in that regard might be suitable. It surely should be part of the responsibility that would flow to the ministry--to avoid any prospective confusion and further attempts to do end-runs around various traditional practices. It should be his responsibility to avoid confusion from anything in these general items in the white paper.

Mr. Crosbie: I think it would follow from allowing, say, use of the word "trusco" by a subsidiary guaranteed by the parent company that you would be required to examine the whole financial structure of the two companies. We would not want to endanger the trust depositors by the collapse of the subsidiary. It is a normal business corporation perhaps carrying on some business that is only vaguely related.

Mr. Breithaupt: That is one side of it. So far as that clear responsibility is concerned there can be certain rules; but here we have the creation of a new word, "trusco," which I think

the member for Riverdale (Mr. Renwick) would probably refer to as a bit cute, if nothing else. It seems an attempt to lead one to believe there are certain things that may or may not happen.

Mr. Crosbie: It is a bit of a passing off, I would think.

Mr. Breithaupt: It is a passing off, yes.

Mr. Mitchell: In this day and age there are many people with really very little money to invest but who want to do something for their future. They see all of these names and for one who is not experienced in the field they could be terribly confusing, let alone anything else.

Mr. Breithaupt: This would be so particularly if the person's knowledge of the English language is not great. Even our own ability to spell on occasion is not that precise. If "trusco" is used, that person is allowed to believe certain rights or benefits may flow when they clearly might not.

Mr. Chairman: The implications are there, certainly.

Mr. Breithaupt: I think so.

Mr. Gillies: It smacks a bit of calling yourself the Reverend So-and-so.

Mr. Renwick: Mr. Kronis, I appreciate your taking the trouble to put together the brief for us on these matters. On each occasion in the assembly when there has been a financial fiasco of any kind, the government's immediate response to the investors who have lost money is that they are greedy. What would your response be to that?

Mr. Kronis: You have to remember that in Argosy, for example, there are approximately 2,000 investors. It is a large number that spans the whole spectrum. On one hand there are some investors with a lot of money who are simply taking the high-risk end of investment. They know it is high risk, high return, and they are happy if they put X dollars in it. They knew what their financial goals were; it was an investment decision and if they lost, they lost.

On the other hand, as the first paragraphs of the proposal stated, we have been through some hard times over the last three or four years and an extra point or fraction of a point of interest meant an awful lot to a lot of people. That is where people got in, because they were really tight and they do respond to interest rates.

I know there are members from different areas of the province here. I would like to say there is a big city newspaper that serves this province well, but I was frankly flabbergasted by the amount of reliance, if you like, or the dedication with which people read that big city newspaper as it goes through the province. In some cases they almost live by the financial pages. If they see an article saying such and such is good, they do respond to it.

There is a whole multitude of cases. I have files on people who have lost divorce money and estate money, and the worst part is they become bitter. They not only become bitter towards the people involved, but they become bitter towards the process. They do not understand, as I said at the end, why it takes so long to get a case to court. If you are familiar with the Argosy matter, for example, the charges were laid a long time ago, and I am sure the authorities are proceeding properly and with due haste, but it is a complex matter.

I think it was the Attorney General (Mr. McMurtry) who said they had now reached out the investigation in the Crown affair into seven or eight countries. When people see that, they say, "It is great that they are doing something, but I need that money to pay my oil bill in a cold winter."

Mr. Renwick: In terms of the characteristics of the clients you have acted for, as set out in your introduction, who are not people with a lot of money putting it out on risk and knowing what it is about, do you consider any of your clients to have been greedy?

Mr. Kronis: Probably some, but not a substantial number. Greed is a state of mind. I am not in a position to interpret someone's state of mind. In almost all the cases, it was not, "I am looking for that extra point." It was, "I need that extra point."

Mr. Renwick: I appreciate your response. I have always found the government's response in its use of that term "greedy" of such persons as you represent to be very offensive, and I am glad to have your comment on that.

With respect to the establishment of a separate investigation unit, perhaps these remarks are stimulated by your submission to us, but I think they are more properly directed to the deputy and his advisers.

The reference to the investigative powers contained in the report is set out at some length on page 15. Perhaps the deputy will understand this. Where I come from, I get concerned when the response of government is to establish a police unit to carry out investigations unless I know what the controls, the guidelines and the precepts are going to be on the basis of which an investigation is commenced. That, of course, then leads to the kinds of persons and the complement that is there.

10:40 a.m.

Has any thought been given by the ministry to the way in which such an investigative unit as is envisaged would function? Who would make the decision that an investigation should be commenced? What would be the basis on which an investigation could be commenced? Would it be perfectly clear that this police unit did not have some kind of roving fishing commission within the ministry to deal with financial institutions? I am not asking you to answer those questions now, but they are the kinds of questions that are very much in my mind about an investigation unit.

Mr. Crosbie: Could I make a general comment? We have given thought to this. Our intent, as indicated in the white paper, was to divide the review and investigation functions of companies into two components. We see there being an ordinary inspection unit, if I can use that terminology, that would go in and do the bulk of the routine examination of companies. In the course of a routine examination they might uncover something that looked suspicious and required an investigation or analysis that they might not have the skills to do.

A very simple example we ran into in the last year or two was where an inspector, a staff member carrying out a routine inspection, found a mortgage he thought was highly unusual. I will not go into the details, but he became suspicious. That particular mortgage and the facts surrounding it were turned over to a more skilled investigative member of the staff and the results of the investigation uncovered a forgery in the appraisal. That is the sort of division we see. We do not envisage the police unit but rather a more highly skilled investigative unit that would combine forensic accounting skills with the more intuitive sense of where to go on investigations that people who have had more experience in that area have.

Similarly, this issue might come up in terms of individuals applying for incorporation where we have to do certain checks on their background. We have found from time to time the information they provided was not an accurate reflection of their net worth or their standing in the community. Staff members who had the investigative skills were able to demonstrate that other facts should have been revealed in the application. When they were revealed, they disqualified the person from taking over a trust company.

Mr. Renwick: I can understand your response within the ordinary operations of the work of the registrar or of the new assistant deputy, the institution or the commissioner. Whatever the structural changes, one can understand that would take place exactly as you have expressed it. Here, however, you are recommending that a separate investigative unit be established and that it will report directly to the new assistant deputy. So immediately, it is taken out of one branch of the ministry and becomes a focus in the other branch.

Two questions are always involved. First, you get a police mentality--and I use that term advisedly, not pejoratively--in the investigation unit. Second, the question of whom they investigate, what triggers the investigation and the legitimacy of the triggering of the investigation seem to me to be very important questions we are going to have to consider.

From the point of view of the person sitting for the time being in opposition in the assembly, when something is under police investigation by a ministry, the public, through questions by opposition members, is automatically denied any information. That is another concern. There is immediately a cloak of secrecy surrounding what is taking place and it is enhanced as soon as you have a separate investigative unit.

Mr. Crosbie: I certainly appreciate the concerns you are expressing.

Mr. Renwick: A trust company dealing with the ministry is affected the moment a special investigative unit has it under surveillance.

Mr. Crosbie: It is almost a signal to the company that this is an unusual circumstance.

Mr. Renwick: And a signal to the public that things are wrong.

Mr. Crosbie: Yes, if it is made public. That is one of the reasons we try to keep most of these investigations out of the public area. It is quite conceivable the investigation will demonstrate innocence and we do not want any implications.

Mr. Renwick: That is why it is important to me that the investigative unit have some procedures by which it does not get caught up and enamoured with its work in such a way it is investigating without having something called "reasonable grounds to believe" or "reasonable and probable cause"; some fundamental, traditional, legal protection against fishing expeditions.

Mr. Crosbie: I really believe what we are proposing is more likely to produce that result than the present situation. In the organization the white paper is addressing, the investigative staff were sort of intermingled with the routine inspection staff. There was not that separation of function. What we are proposing here is the routine inspection staff will be separated out and will focus on those responsibilities. In most cases, they will be the trigger. They will identify the situation that would call in the special investigative unit.

With the special investigative unit reporting directly to the assistant deputy minister, there is the opportunity for direct control. We did not want to create a small investigative unit like this in each program area. Because of the need for specialization, we could not staff a small investigative unit for insurance, another for trust companies, another for credit unions and so on. We felt by centralizing it we would make it available to all the financial institutions.

At the same time, as it is under the assistant deputy minister, he will have an opportunity to control closely the very things you are concerned about. We hope to see some reasonable cause determined before sending an investigative unit into a trust company or any other financial institution.

Mr. Renwick: There are just two other distinctions I would like to make. I would like to make the distinction that I think the regular treatment of complaints that might come in from members of the public should not be a function of that special investigative unit. I think the step should be that receipt of a complaint and the initial investigation should not be tinged with something called a police aspect.

That should be completed in the regular way and treated as a natural concomitant of business with the public. When the complaint has been investigated and the decision is made that it is either satisfactorily resolved or has led to something which requires it to be transferred, it would then be transferred, rather than having this as some kind of catch-all operation. I think the two functions should be separate.

Mr. Crosbie: I think I could agree with you on that point. I would put one caveat on it. In my experience, not just in this ministry but other ministries as well, where situations arise where there may have been a criminal act--theft or fraud of some kind--on a number of occasions I have been told by the police who eventually came in to take over the investigation that we should not have been in there with our regular audit staff or investigative staff, mucking about trying to find out what it was all about because it makes it more difficult for the eventual police investigation.

Mr. Renwick: That is a judgemental question.

Mr. Crosbie: Exactly. That is why I say there may be circumstances where a complaint would justify sending in an investigative team.

Mr. Renwick: As long as it is considered here and the decision made, we should immediately transfer it. I do not mind it being transferred immediately if such a situation arose. All I am saying is they should not go in in the initial instance.

10:50 a.m.

Mr. Crosbie: I agree. It is not their decision to go in.

Mr. Renwick: The investigative unit.

Mr. Crosbie: Yes.

Mr. Renwick: Another question is I do not have any objection to the spot audit system as such, as long as it is random in the accurate sense of that term. I think that is a very valid, effective method and people understand that. It does not carry with it a connotation of wrongdoing, if it is random. If, however, it is used as a disguise for a selective form of spot audit, saying, "We have some suspicions and, disguised as a spot audit or a random audit, we are going to go in there and check," then you make the distinction inappropriately between a spot audit and an audit in the course of an investigation.

"Spot" is an ambiguous word. I would say "random" audit. The process of random audits is fine. I do not mind that. But the term "spot audit" lends itself to the connotation that somebody has got some suspicion somewhere and it verges on a fishing operation.

Mr. MacQuarrie: Supplementary.

Mr. Chairman: Yes, Mr. MacQuarrie.

Mr. Renwick: I can see I am stimulating Mr. MacQuarrie to some comment.

Mr. MacQuarrie: As a matter of fact, I find you very stimulating, Mr. Renwick. I also find some problem in distinguishing between the regulatory or examination section and the investigative section.

Mr. Crosbie mentioned people with a knowledge of forensic accounting and that sort of thing. One immediately thinks of a specially trained core of investigators. I wonder what powers would be given to them. Would they be supernumerary special constables in the OPP? What connection would there be with a police force? Would they have the power to go in and search and seize, or just search, examine and copy records? Under what process would they exercise those powers?

Mr. Crosbie: We have not been thinking of creating special constables. There are certain provisions in the act that require the officers of trust companies and their employees to make available records, documents and information. It is an offence under certain provisions of the act to withhold that information.

Mr. MacQuarrie: But the power to remove and retain, or remove, copy and return--

Mr. Crosbie: I will ask Mr. Thompson to explain some of the procedures currently under way. He is more conversant with the day-to-day operation than I am.

Mr. Thompson: Fundamentally, anything that is not contained in the statutes would have to require working together with a police force so that the investigator per se is not a police constable with the powers of getting a search warrant and things like that.

This is to try to overcome the problem that in many of these areas a special expertise is required about the nature of a financial institution, its documentation, etc. In substance, where to look and what to look for that is not available to the average police officer. There is a wide variety of things. In circumstances we have had, such as subsidiary companies trying to get records and search and seizure, they are always done in conjunction with an existing police force, mostly the OPP.

Mr. MacQuarrie: In the case of loan and trust corporations, there could be a number of areas. As Mr. Renwick indicated, an investigative body need not be called in on a citizen's complaint about something. This could be handled in the normal course. It all depends on the nature of the citizen's complaint and who the citizen is. If the citizen is also an employee of the firm who sees something wrong being carried out, I imagine that should trigger an investigation almost immediately.

I was just trying to picture in my own mind the nature of this investigative unit. I have had some familiarity with investigative units under another statute, the combines

investigation branch, where you have a core of specialists going in with the right to search and seize under a special warrant.

In cases going to trial, they are sworn in. When they take on their employment, they become supernumerary special constables in the Royal Canadian Mounted Police. Those investigations are triggered by any number of things--citizen complaints, petitions signed by so many citizens, municipalities complaining about a strange consistency in tenders for certain goods and services, and that sort of thing.

Although I see the value of an investigative unit, I would like to see it formed up a little more definitely from my point of view. The concept is a good one, but we have to get some bones or a framework for it.

Mr. Chairman: Mr. Mitchell, do you have a supplementary?

Mr. Mitchell: Yes, if Mr. Renwick has no objection; it is on this business of an investigation and so on to be sure I understand correctly.

If your investigators are sent into a specific area, they do not have the authority to seize anything, but they do have the authority to examine all documents. Is that correct?

Mr. Thompson: Yes, that is correct.

Mr. Mitchell: I am thinking back to a specific situation about three or four years ago when some documents did a musical chairs situation. They appeared to move from office to office. It appears the only protection you have against that is an order. Is that right?

Mr. Thompson: No. I think the protection you have is you must utilize the existing police forces, and if you want a search and seizure--

Mr. Mitchell: But to do that, the police force obviously has to have an order.

Mr. Thompson: Yes. They must get a search warrant in the regular routine of an investigation.

Mr. Crosbie: Perhaps I could speak to Mr. Mitchell's point. I think Mr. Kronis touched on that elsewhere in his presentation when he spoke to the issue of where the records of a financial institution must be kept.

Mr. Mitchell: Exactly.

Mr. Crosbie: I think that is an important issue because, if you allow them to be taken out of the office and maintained in the solicitor's office or in the accountant's office down the street, you do not know where they are, and an investigative officer or official going in may not find the documentation necessary.

Then you do get involved in having to go through a much more formal process because, generally speaking, your Loan and Trust Corporations Act would not give them authority to go outside the financial institution to seek that information.

Mr. Renwick: I have two other points. On item C of Mr. Kronis's presentation on page 4, I certainly support the comments made by Mr. Breithaupt in dealing with the name question and the matter which the deputy raised with Mr. Breithaupt about the guarantee question that was in Mr. Walker's original bill.

11 a.m.

The concept of the guarantee and the extent of it should be canvassed very clearly. First, I think the registrar has to have control over the names of all subsidiaries and affiliates so there is not this proliferation of deceptive naming and so on. As a corollary to that, the concept of the guarantee should be thoroughly examined as a method of dealing with that question. As a part of that you then have to make certain the public is not misled as to the extent and limitation of the Canada Deposit Insurance Corp. guarantee.

It is a mix. However, I think if a trust company believes it is advantageous to have a subsidiary or affiliate for some business purpose, or the holding company thinks there should be an affiliate of the trust company carrying on its business, then clearly it has to extend a guarantee. If it can be made to fit in such a way that it makes sense, I think it would be an important concept.

In the conflict of interest portion on page 5 of the white paper it says, "The governing bodies of the various professional associations concerned should be invited to consider and advise the government as to changes which they propose to make in the codes of conduct and ethics that govern their members to prevent the involvement or participation of those members in conflict-of-interest situations."

My first question is whether the Law Society of Upper Canada is going to appear before us. If not, would it not be wise for the chairman to write to the treasurer of that body inviting him to attend before this committee because of the serious--

Mr. Breithaupt: Inviting her to attend.

Mr. Renwick: Yes, inviting her--or whomever they may wish--to attend before the committee to discuss with us the ramifications of the conflicts of interest in the legal profession.

Mr. Chairman: I think we can do that very readily.

Mr. Gillies: I had a question about item J. I am rather intrigued by Mr. Kronis's suggestion that perhaps the crown or the registrar should be acting on behalf of depositors in the event of problems. I wonder if the deputy minister could comment on that. I am sorry if you already have commented while I was out.

Mr. Crosbie: We had not commented on that specifically.

In a situation such as the present one where the registrar is in possession and control of the assets of three trust companies, he is acting on behalf of the depositors and other creditors in an effort to realize the assets of the corporation and to make the most beneficial recovery of those as is possible.

Obviously there are situations with different types of financial institutions where the registrar does not get into possession--where he does not find himself in that position, and maybe it is impossible for the registrar to take on that role. There are situations where there are no provisions for the ministry, the registrar or anyone in that capacity to be some sort of public advocate or defender on behalf of interested depositors, creditors or shareholders.

Mr. Gillies: I certainly appreciate that the actions the ministry took in the last year, in my opinion, were in the best interests of depositors. But are you suggesting, Mr. Kronis, that the crown or the registrar should be acting in individual actions on behalf of depositors against the companies?

Mr. Kronis: What I am doing is inviting this committee to consider perhaps substantive or procedural actions--perhaps a class action. To give you an example, in certain of the syndicated mortgages the number of investors is in excess of 100. In terms of an individual's financial resources, it is really impossible to mount any kind of strategic legal defence or offensive to get his money back.

In a syndicated mortgage, you have to appreciate the money may have been taken in on a different date for each of the people. The money, if it was in fact advanced, may have been advanced on a different date. The documentation the investor received would be on a third date. It is just an absolute mess.

There is no way any practising lawyer can say to his client, "I think this case can cost you X dollars," within the means of the client and then proceed to do a proper professional job and get to the bottom of it. You have police forces running all over the world.

For example, in the Argosy receivership report, one of the paragraphs on the first page, and it is a standard one with a lot of legalese, says, "It was a mess. Half the documents were missing and every third file was thrown out the window." There is just no way you can put any of that together. This is what I alluded to.

There is a particular mortgage, for example, that was collected or dealt with in Argosy's offices for which London Loan Ltd. assumed the fiduciary duty. I can give you the exact words in the document, and their hands are strapped today, be it old management, new management, it does not matter. It is something that cannot be followed up.

Perhaps there has to be a class-action type of situation. I think there may be a precedent in other statutes where the

investor can get some remedy through the legal system, through the administration. If he does not, then as you have clearly seen, he just goes outside the legal system and gets into the political action area, which does nobody any good.

Mr. Gillies: I appreciate that.

Mr. Crosbie, I wonder if the ministry might at least consider some of the arguments made in this area. I am trying to think of an appropriate precedent, if you will, or an appropriate parallel with other types of businesses and with other types of professions.

Mr. Crosbie: I might mention, Mr. Chairman, the whole subject matter of class actions has been discussed for some time. I know we are looking at them generally in the ministry to see what application they have in various areas of our responsibilities, and I certainly would be quite pleased to take Mr. Kronis's comments and add them to the material.

I do not know whether it would be appropriate to establish a separate class action, for example, under the Loan and Trust Corporations Act, or, if it is an acceptable concept, whether it should not be some general procedural rule, maybe in the rules of practice, that could be amended to facilitate this type of thing, rather than trying to deal with it on an ad hoc basis in each specific area where it might arise.

I think we would want to talk to the Ministry of the Attorney General and others about the whole process.

Mr. Gillies: We will do that too. We will undertake to do that.

Mr. Chairman: Thank you, Mr. Kronis, for appearing this morning.

Mr. Chairman: The next group to appear is the Institute of Chartered Accountants of Ontario. Their exhibit is exhibit 20 and it is Peter LaFlair and gentlemen. Mr. LaFlair, could you possibly introduce your colleagues?

11:10 a.m.

INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

Mr. LaFlair: I will introduce the chairman of our committee first, Joe Bones, and he will take over from there.

Mr. Bones: Mr. Chairman, ladies and gentlemen, my name is Joe Bones. I am the first vice-president of the Institute of Chartered Accountants of Ontario. I am also a member of the board of governors of the Canadian Institute of Chartered Accountants. I am in public practice with Ward Mallette in Ottawa, and I am executive partner for our firm for Ontario. I am also chairman of the Ontario institute's committee on loan and trust corporations.

With me are some of the members of our committee. On my

right is Mr. Peter LaFlair, director of professional services for the Institute of Chartered Accountants of Ontario. On his right is Mr. Ron Finch, a partner with Price Waterhouse. On my left is Mr. David Selley, the auditing standards director for the Canadian Institute of Chartered Accountants. On his left is Mr. John Denman, the accounting standards director for the Canadian Institute of Chartered Accountants.

We welcome this opportunity to appear before your committee. We are speaking on behalf of both the Ontario and Canadian institutes today in this paper. The Ontario institute represents about 18,000 chartered accountants in Ontario and 5,000 students. Generally, some of the areas we are concerned with include the conduct and ethics of chartered accountants in Ontario and their competence.

The national body, the Canadian Institute of Chartered Accountants, represents over 35,000 chartered accountants, and as well as items of national interest, it is particularly concerned with accounting and auditing standards. The CICA Handbook in these areas is recognized in legislation as being the authority in a number of areas in Canada on accounting and auditing matters.

We have no new material for you this morning. Our intention is to discuss some of the highlights of our report. I will be going through in the order they appear in our report of February 3 to you.

Generally, there are two main thrusts to our report. First, we do have some comments, recommendations and concerns on items appearing in the white paper. Second, we feel there are a number of areas where the staff and volunteers of our institutes could be of assistance to the ministry or to your committee. We mentioned some areas in our report where, if you so desire, our resources would be available to assist you.

We share the concern expressed in the white paper that public confidence in the loan and trust industry should continue to be justified. We have directed our review of the proposals with a view to achieving that end.

At the outset, we would like to state very clearly that there has been no evidence presented of any inadequacy of annual or interim financial reporting standards of loan and trust companies. The industry follows generally accepted accounting principles that are set out in the CICA Handbook, and that are applicable not only to the loan and trust industry but to most other commercial and industrial enterprises in the country.

Further, there is no evidence of any gaps in the rules of professional conduct of chartered accountants that would permit with impunity actions that are not in the public interest. But we do recognize that the registrar may require additional information and data, and we would certainly be pleased in a number of those areas to assist in the development of that data.

Our report is separated into nine sections. As we go through the sections, we would welcome comments or questions from the

committee as we cover them. Our preference is that the member of our committee who is most qualified in a particular area respond to your questions.

The first section is code of conduct and ethics. In this particular section we are referring only to the code of conduct and ethics of chartered accountants in Ontario.

Chartered accountants are subject to an extensive set of rules which govern their conduct and ethics. They are backed up by a very effective investigative and disciplinary process carried out in accordance with the Statutory Powers Procedure Act. Of particular interest to you might be our "Standards of Conduct Affecting the Public Interest" which are set out in the appendix to the report.

I will read a few of the rules of conduct.

"201. "A member or student shall conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

"202. A member or student shall perform his professional services with integrity and due care.

"204. A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship in respect of his client's affairs which impairs his professional judgement or objectivity, or which in the view of a reasonable observer has that effect.

"206.2. A member shall not express an opinion on financial statements or other financial information examined by him if he has not complied in all material respects with the generally accepted auditing standards of the profession, including those as set out in the CICA Handbook as amended from time to time."

I think an examination of our rules will make it apparent that it is difficult to envisage a situation relating to the concerns expressed in the white paper which would not be covered by the rules for chartered accountants in Ontario.

We can have rules but, in the event someone does not follow the rules or is perceived as not following the rules, our process in the Ontario institute is that any person can make a complaint to the Ontario institute. We process that complaint quickly. Upon a complaint being received, a member is considered innocent until found guilty and, therefore, it is on a confidential basis. We move quickly to investigate that complaint including, if we feel it is necessary, hiring investigators to look into it.

If the member is guilty, the results of the hearings could result, depending on the nature of the offence, in taking some courses if it is a minor matter of competence. It could result in suspension, fine or expulsion from the institute. In most cases, the name of the member is made public and the results of the hearing is passed on to the Public Accountants Council for the Province of Ontario.

I might point out the rules of conduct for chartered accountants apply to every chartered accountant in Ontario regardless of whether they are in public practice or are employed in industry, government or elsewhere.

As part of our ongoing review of the rules of professional conduct, our institute's professional conduct committee is reviewing the Morrison report and the section of the white paper relating to conflicts of interest to see if any clarification is required in our rules.

Our next category in the report is accounting standards. The required standards at the present time for the annual financial statements and disclosure by loan and trust corporations are very high. The loan and trust corporations conform with the generally accepted accounting principles as set out in the CICA Handbook. This handbook has been recognized across Canada in numerous legislation, including regulations under the Ontario Securities Act, the Business Corporations Act, and the Canada Business Corporations Act which all require that the annual financial statements comply with the CICA Handbook.

Perhaps you might wish to consider a specific regulation that Ontario's Loan and Trust Corporations Act comply with the handbook.

11:20 a.m.

A concern we have with accounting standards in the white paper is the requirement for special purpose reporting. We recognize the need by the registrar for some special reporting, but we are concerned that this special reporting not lead to distorting the annual financial statements and reports of loan and trust companies.

For example, it is suggested in the white paper that the registrar may have influence in certain valuations or in accounting principles in the treatment of subsidiaries. This is on page 18, paragraph 5 of the white paper.

Our concern is that if these requirements of the registrar are not in accordance with the Canadian Institute of Chartered Accountants' handbook and generally accepted accounting principles, they could lead to the auditor having to qualify the report for the loan and trust corporation. This would be highly undesirable because although the corporation may be meeting the internal needs of the registrar, it would create a problem for the trust corporation, not only with the Ontario Securities Commission but also in its credibility with the public, if its report is to be qualified.

Therefore, in this area we feel if the registrar needs additional information, special calculations, special valuations, these can be done. They can be reviewed and reported on by the auditor, but it should not be mandatory that they be part of the annual financial statements or that they necessarily affect some of the figures in the annual financial statements.

The CICA research department in accounting and auditing matters are the most qualified in this area and recognized in this area, and certainly would be pleased to work with you in developing standards and guidelines for the use of the registrar.

Carrying on to auditing standards, the CICA handbook presently contains basic auditing standards. It is our belief that most of the recommendations for the involvement of auditors contained in the white paper are covered by the existing CICA handbook requirements. If there are specific procedures the committee or the ministry feels are required in addition to what might be in the handbook, we would be pleased to work with you to develop those procedures for specific circumstances.

There is mention in the white paper about the auditors' reporting on internal controls. At the present time the audit is designed to permit the expression of an opinion on the financial statements, rather than on the adequacy of internal controls per se. In the event that the auditor reporting on the internal controls of loan and trust companies is to be required by the ministry, again, we would like to work with you to explore just how this might be done and to develop guidelines for the auditors.

We believe the auditing standards now in place are adequate to meet the requirements of the ministry as outlined in the white paper. We do not think it appropriate or desirable that the ministry should attempt to set auditing standards. Again, if there are specific matters or situations that you feel should be audited, we would be pleased to work with you in developing the guidelines.

The next section of our report deals with the reporting requirements of the registrar. The recent difficulties which led to the white paper apparently arose from a lack of management controls. They did not result in any significant respect from either a financial statement reporting or an auditing problem. It is therefore critical that management controls should be maintained to prevent a recurrence. We therefore support the proposals to require an audit committee and to require an investment committee. We also support the proposal to require notification to the registrar of changes in directors and certain officers.

However, we have serious reservations about giving the registrar the power to intervene in the process whereby the shareholders elect directors, and also to intervene where the directors currently have the power to appoint the chief executive officer and chief financial officer.

This would be quite a change from common business practice and we do not see where the need would be to make this so unusual that you would have to intervene in the normal process carried on in most corporations.

We support the reporting of auditor changes and reasons therefor to the registrar, and we suggest the process used by the Ontario Securities Commission and other securities commissions be adopted.

Regarding the suggested expanded monthly reporting system, we would like to assist in the further evolution of the trial program currently being carried on. Our main concern in this area is we think the reporting of additional information is good, but that you should give adequate thought to what are the required data. There are changes each year in the economy and in business circumstances. I guess we are concerned that the people receiving these reports would receive too much information and would not be able properly to digest the information and get the real meat of it.

It is important to think about the critical ratios and what you really need in these reports. Even once you have decided on that, at least once a year there should be a hard look at these reports and whether they are giving you the information you require to monitor the industry.

As they are developed, perhaps in certain cases there will be exemptions or you will be selective as to who must report and what they should report. As part of this process, we feel it is important you obtain written representations as to the report's accuracy from responsible people within the corporation.

Uniformity of accounting records: The white paper suggests "it will be necessary to adopt greater uniformity in accounting practices and internal record-keeping." We read this as relating only to the internal management accounts and record-keeping so that your monthly report will be effective.

As we previously noted, the annual financial statements are already being uniformly prepared in accordance with generally accepted accounting principles. We believe a sufficient degree of uniformity can be accomplished for the registrar's purposes by simply setting out the format.

There is a considerable variety in the size of the loan and trust companies and how they keep their records. I do not think your regulations should carry down to the detail of exactly how they keep their records. I think your main concern should be with the output from these records and whether you are getting the necessary information in a uniform and consistent manner.

Federal and provincial legislation: We note that a majority of the companies affected by the white paper are incorporated in other jurisdictions and we would emphasize the necessity of co-ordinating Ontario's requirements with those of other jurisdictions to avoid unnecessary and costly duplication for the industry.

Borrowing, deposits and trust funds: When we were preparing this report, we made the assumption that the comments on page 28 of the report were applying to estate, trust and agency funds. We understand now that was not the intention of the white paper, so our comments on estate, trust and agency funds are not really relevant on page 6 of our report.

11:30 a.m.

Going on to page 7, we would like to say we believe the present practice of disclosure of the amounts of guaranteed trust funds in a note to the financial statements is quite acceptable. It is the common practice in the industry now, so we do not see a need for any change in this area.

The proposed administration does represent a significant increase in the resources allocated to the ministry. It certainly should enable the ministry to have a greater degree of control over the operations of financial institutions and hence more responsibility to ensure that the sort of problems recently experienced do not recur.

The broadened discretionary powers of the registrar would be offset somewhat by the right to appeal decisions to the commissioner of financial institutions. There could possibly be a considerable number of appeals, with related cost and controversy. Therefore, we are suggesting that clear criteria be established for the guidance of the registrar to avoid unnecessary appeals.

We are not entirely convinced that the proposed financial advisory committee is necessary, but if it is set up, we believe that chartered accountants should be represented on the financial advisory committee.

Auditor's role: Audits have a cost, and we hope that full-scale audits on the monthly information are not going to be required by the registrar. We do see that you may possibly wish specific audits of particular items or, in certain situations, either audits of specific items on a regular basis or surprise audits. We would be glad to assist the ministry in devising practical guidelines for any of these special audits.

It must be recognized that the recent trust company problems resulted from inappropriate practices, which in some cases did not become apparent even to people within the corporations until some time after the fact. The auditor does not spend every day with the client and he may not become aware of some of these problems until long after they have occurred, when he is in some time after the end of the year doing the annual audit.

When the auditor does discover items that could have a detrimental effect on the corporation or the people having a stake in it, there should be some effective reporting mechanism. But we do not agree with the suggestion in the white paper that all the correspondence between the auditor and his client should be sent to a third party. We believe the appropriate reporting channel for the auditor is to the audit committee.

The white paper is suggesting that every corporation have an audit committee. It is common business practice as to what the role of the audit committee in a corporation is. Ideally, there should be outside members on the audit committee. We feel you should leave it to the audit committee that, if they are not satisfied with what they are hearing from the auditor or with the action the company is taking on comments from the auditor, then the audit committee could pass these comments on to the registrar,

or perhaps you might require that the minutes of the audit committee be sent on to the registrar.

We recognize that if you were to agree with us on this suggestion, there could still be cases where the auditor is not satisfied that the audit committee is reacting or that the management committee of the firm is reacting to the auditor's recommendations. We would suggest that in those cases the auditor then would report to the registrar. Perhaps if you are trying to legislate this, you could do it in a way similar to the federal Bank Act. In the federal Bank Act there is a section that requires the reporting by the auditor of matters affecting the wellbeing of the bank. As a final step, if the auditor is concerned, and only in those cases, the auditor would report to the registrar.

If it is deemed necessary, if there are reportable matters not included in the annual reports of the financial statements you feel the auditor should be reporting on, then if we can clearly define what these items are we can develop some guidelines for the auditor to report separately on these items, either to the registrar or to the company.

The white paper proposals place a number of reporting requirements on the auditors, including one with respect to significant benefits that have been afforded to shareholders or insiders. It is important in examples such as this that if there is to be new legislation, you make it clear whether the auditor is merely required to report such matters as may come to his attention in the normal course of his audit or whether you are specifically requiring the auditor to search out such breaches.

If you are expecting the auditor to search out such breaches, we would have to review that carefully because in some cases of the type of breaches you might hope to find, even if you give that mandate to the auditor, without an excessive cost it just may not be possible for the auditor to perform enough work to search out all types of breaches. If you wish to achieve something in that area, we have to define just what you are expecting from the auditor.

Another possibility would be to explore the development of certain key questions to be answered and information to be provided by the corporations in their annual filing with the registrar. This annual questionnaire could be reviewed by the auditor. This system is in place at present for stockbrokers and it appears to work quite well.

Most of our paper and our comments today are intended for the wellbeing of the industry and the public, and I hope you do not consider any of it to be self-serving. I think that, with some of the suggestions in the report, when we come to the section where you suggest that auditors be protected against personal liability, if we are to take on new responsibilities, we would certainly agree with you.

Mr. T. P. Reid: You agree with that?

Mr. Bones: Yes, we agree with that one without any question.

Mr. Breithaupt: We can live with that one.

Mr. T. P. Reid: We will make a note of that one.

Mr. Bones: To conclude our written report to you, we feel the white paper provides an excellent opportunity to pursue a number of positive initiatives and we would be pleased to assist the Ministry of Consumer and Commercial Relations or your committee in any further study of any of the topics raised in the white paper. We feel it is important that chartered accountants be involved in any accounting or auditing aspects of your deliberations or where you may be suggesting changes to legislation.

In the case of the accounting and auditing standards, we have the Canadian Institute of Chartered Accountants and their accounting and auditing standards directors with us this morning, if you wish to discuss anything with them. On any matter affecting chartered accountants, certainly the Institute of Chartered Accountants of Ontario would be pleased to assist you. We appreciate this opportunity and we welcome any of your questions and comments.

Mr. Renwick: Mr. Chairman, Mr. Bones and your colleagues, I appreciate the completeness of the submission you have made to us. Of course, in the short time available on the committee I cannot cover more than a few points that are important to me, some of which are referred to--I think all of them are referred to, basically, except for one matter--in your submission.

11:40 a.m.

If I may jump around a little bit, on page 7, item 28, you say, "Specific audits of particular aspects could be carried out on a regular or a surprise basis on the instruction of the ministry." We touched upon this a little bit earlier. A matter that has come up from time to time is the question of so-called spot audits, surprise audits or random audits. I am anxious to draw a distinction between a spot audit or a surprise audit made on the basis of some suspicion on the one hand, and a useful public check on a random basis on public bodies, whether they are lawyers or trust companies and so on, on the other hand.

If you were asked to develop a plan for the ministry on the basis of which random or surprise or spot audits on a random basis were to be made of the industry, could it be done, using "random" in the accurate sense of that term and not on the basis of suspicion?

Mr. Bones: I think it could be done. With your question I am keeping in mind some of the conversation that was carried on earlier this morning with the previous speaker.

Mr. Renwick: We touched on it a few days ago.

Mr. Bones: Yes. I guess our first concern when we read the white paper is that we be careful about making too many things mandatory for all loan and trust corporations. When we say there is a need for investigation, monitoring and review, we have to be careful that we do not make too many things mandatory for everyone, increasing the cost considerably in trying to prevent or catch just a few situations.

I can give you one example of the spot audit. In our own institute we have a practice inspection program whereby over a certain time period we go in and examine the files of all our practising members. It is over a certain time period, and within that time period we look at every office. It seems to work out well. In that case the intent is to do it over a certain time period, and we have looked at every office.

Another example is that with respect to the data you are getting monthly you may have certain guidelines that if margins are too narrow or there are certain trends, this might be another signal. In our case with the practice inspections the names are drawn out of a hat, but over a time period we see every office.

Mr. Renwick: But it is random.

Mr. Bones: It is random, yes.

Mr. Renwick: In the accurate sense of that term?

Mr. Bones: Yes, completely random.

Mr. Selley: You could set rules for how you would determine the randomness, and it would be up to the department to comply with those rules.

Mr. Renwick: So a plan could be developed.

That leads, at least in my mind, to page 4, items 13 and 15. Again I say this with great respect to your profession. In substance the message to me from your submission is that, in the case of the problems that occurred in the trust companies that led to this white paper, nothing has come to your attention in your special role of accounting matters related to loan and trust corporations that would lead you to believe there was any default on the part of the auditors of those companies in the course of their affairs. Is that a fair statement?

Mr. Bones: Yes, that is correct. Nothing has come to the attention of our committee, certainly, while we have been preparing this report or to the attention of our institute.

I might say that if a complaint had been made to our institute about some member's conduct, it would be highly confidential, as I mentioned earlier, and the member would be innocent until proved guilty. But in our preparation of this paper and in studying your white paper--and we have looked at some of the public documents; we certainly did not have time to study them in detail--it is the opinion of all the members of our committee that we support this statement, and nothing was brought to our attention.

Mr. Renwick: That would be true to the extent that you have been able to study the Morrison report in its various aspects.

Mr. Bones: Yes.

Mr. Renwick: I think it is very important that we be clear on the record--and I am taking it as an objective public institute and not in a self-serving way--that you are saying to us that whatever the problems were, there were no either ethical conduct problems or conflict of interest problems with ethical overtones to it or inadequacies in the accounting process for audit purposes.

Mr. Bones: Yes, that is correct, and I would confirm this on behalf of the Ontario institute regarding the conduct and ethics. Just for clarity, since we have the accounting and auditing research directors of the Canadian Institute of Chartered Accountants here, I would ask if John and David would each respond to that question as well.

Mr. Selley: On the auditing side I think in all the situations--and I have read the Morrison report, but one cannot appreciate the Morrison report by reading it, obviously--I did not notice anything that would indicate that the auditing standards in existence were deficient; neither did anything in there come to my immediate attention that would lead me to believe anybody had significantly failed to meet those standards. But, of course, I understand the Ontario institute is reviewing the Morrison report.

Mr. Renwick: Yes, I recognize that caveat. It was in here somewhere.

Mr. Selley: There are certainly a few suggestions in the Morrison report that things might not have been done that should have been done, and I presume the committee will look at those.

Mr. Denman: May I just speak on the accounting, since you directed the question to the accounting standards, I think. As far as accounting standards are concerned, I suppose the acid test in any particular case where we have a problem is whether or not the standard is in place; that is the first issue. The second issue is whether or not it is being complied with by management.

In the case of the events that led to the white paper, it certainly appears to us that the accounting standards published in the CICA Handbook were in place. Perhaps to give two specific examples, I think two areas of difficulty emerged and were identified by Morrison. One is in connection with related-party transactions and disclosure of transactions with related parties; the other is the issue of appraisals.

In both of those areas there are standards in the CICA Handbook. That in the case of related-party transactions requires disclosure not only of the existence of the related parties but also of the nature and extent of the transactions that have been carried on and what their effect is. This standard also requires disclosure of a situation where there is a high degree of economic dependence on another party. So in the case of related-party

transactions the standards are in place. In the case of appraisals they are also in place. The standard there is that there would not normally be appraisals except in certain exceptional circumstances, and these are given by way of an example. So, as I think Mr. Bones has indicated, the accounting standards are in place, and that perhaps is not the issue.

There is, though, an issue that I might perhaps mention, and that is whether or not those standards are sufficiently detailed to provide the kind of framework that would appear to be necessary for the exercise of judgement in applying them. The accounting standards committee does work on the basis that one cannot possibly cover the whole waterfront with rules; you cannot invent rules that will cover every particular circumstance.

I suppose if there is an issue it is whether more guidance could be given on some accounting standards, and I suppose it is in this area that, as has been said in the submission, the CICA will be pleased to work with whoever is involved to see in what way we can perhaps help in providing more guidance. But, again, the basic standards are in place.

11:50 a.m.

Mr. Renwick: I appreciate that comment. In 1973 and 1974, when we were doing the work leading to the select committee's report on loan and trust corporations, we had the benefit of those 1971 accounting procedures for loan and trust companies, which in a sense was, if not a pioneering effort, certainly a very essential step in the development of accounting for loan and trust corporations. I take it what you are saying is that those procedures, to the extent they have been modified, will be now scrutinized again to see whether or not they should be refined.

Mr. Denman: Yes. I have mentioned those two particular standards. It is the practice of the accounting standards committee to keep under review accounting standards and particular problems that may have arisen in applying them. But we would not go so far as to expect that detailed guidance could always include issues that would cover every conceivable situation.

Mr. Renwick: I understand that.

I would like to come back now to this question of the random process. I was struck by the problems you raised in items 13 and 15 on page 4, where you deal in item 13 with respect to internal controls and in item 15 with respect to management controls. It seems to me that was a crucial area in the creation of the problems that occurred in the trust companies that precipitated the white paper.

I am making this comment, bearing in mind the cost factor of this kind of matter. Would it be possible to establish a random, in the accurate sense of the term, system under either the auditors or the registrar--basically, my preference at the moment would be for the auditors--and it would be fully known to the 94 companies in Ontario that that is what is going to happen, a

system of dealing with the adequacy of and compliance with internal controls or management controls? Is that a possible way in which we can get around the question of overresponding by way of uniform regulatory requirements for everybody? I do not know whether I have made myself clear to you on that or not.

Mr. Selley: If the ministry were to set up a random process which covered all subject companies, let us say over a three- or four-year period, they could then send out instructions to annual auditors, who would presumably submit the responses to the ministry for those corporations together with their annual audit book during the course of the year if that was felt to be appropriate. It would be important, though, to deal with the cost factor to make sure that, instead of asking for a general opinion from the auditor, "Are the controls adequate?" the guidelines should be in place and specific questions should be asked. At the end of the submission here, there is a suggestion of a questionnaire approach that could be adopted.

If the ministry had need for certain information on management controls and internal controls, they could ask management to provide it on a random basis and then they could ask the auditor to say whether he believed that information was correctly stated by management.

For example, you could ask the question, "Is there an audit committee? Has it met twice a year? How many times did the investment committee meet?" You could ask various questions like that. It would be preferable if management answered the questions and the auditor then commented on whether he thought they were appropriate or not.

Mr. Renwick: To me, abstracting from the whole of the episodes that took place and bearing in mind that, in a sense, it is a complex question, if I had to abstract one thing from the Morrison report and from what one could read about the matter, it is the rapid deterioration in the position of Crown Trust in such a short period of time in relation to its responsibilities to the public.

If anyone had said beforehand that could take place so quickly, I doubt anyone would have said it was possible. You might have said, "Yes, over a period of some time," but, the way I could read it, it was talking about three months. It was only by a stroke of luck that when the man from the Continental Bank of Canada happened to be in there, he rescued it by the end of the year to restore some stable but unstable balance in the accounts.

With that in mind, would it be possible to establish the kind of random--surprise, spot, or whatever you want to call it--basis for all the companies over a period of time, which would be effective within those limitations, rather than an elaborate bureaucracy of monitoring and regulation by the ministry?

Mr. Selley: I do not think anything could unless you were very lucky in your random selection. It is very difficult to conceive of a system involving auditors or inspectors that could catch the Crown Trust situation which happened so quickly.

Mr. Breithaupt: It would set a tone.

Mr. Selley: Yes, it would.

Mr. Renwick: It would establish a sense that it is a good precautionary thing to know somebody may open your door one day and want to walk in. That is the whole theory of the spot check, as I understand it.

Mr. LaFlair: The other approach there would have been the monthly reporting which was suggested. If it could show something that looked unusual, then the ministry might want to direct someone to go in and find out what is happening when you have a specifically directed audit because of a specific situation arising.

Mr. Breithaupt: Just on this point, you talk about setting the tone by having this investigative opportunity, whether it is done through the auditors' increased responsibilities at an understood cost as part of the responsibility of the trust business, or whether it is done by a much higher level of bureaucracy, more assistants, more investigators, whatever.

I am wondering if the ministry has considered what size of a staff you would need, and at what cost--whether it is recovered from the trust industry by an assessment or not--compared with the easier opportunity of sharpening up the audit responsibilities that are now supposed to be in place. It is going to cost money, which must come from some source, to do all this. I am wondering what benefit is gained for that expense and at what cost? Do you have an educated guess on what that might mean?

Mr. Crosbie: Our difficulty in trying to give an answer to that question is that we have not considered it in the way you have expressed it. We have proposals for additional staff in the audit area and some of our thinking was somewhat counter to some of the suggestions I have heard this morning.

It was our thought that in circumstances which would justify a heavier audit--for example, a new company or change of management if the management is not experienced in the area--you would have what you might call a spot audit but in a sense it is a fishing expedition. You are going in not knowing there is anything wrong but, because it is a new organization, you feel it requires more frequent auditing initially.

12 noon

Mr. LaFlair made the suggestion that monthly reports might act as a signal. Once again, we would be going in with a proposal. We would respond in that way and be able to go in and look at any apparent irregularities.

Mr. Breithaupt: But as Co-operative Trust Co. of Canada mentioned yesterday, if you are also going to receive and stack up all the directors' minutes, some of them 30 pages long for a meeting that goes a day and a half or whatever, is anyone going to

read these minutes or are they just going to fill up a couple of more filing cabinets each year?

Mr. Crosbie: I would hope the message has been coming through fairly loud and clear in a number of presentations. I believe we have heard it, and we will respond to it. The message is, whatever regulatory process we put in place has to be effective, and it should not just be a paper-gathering exercise. It has to have some meaningful results or applications.

On the question of minutes, I think we want to look very closely at the type of minutes or documents we want to have filed on a regular basis. As you suggest, there could very well be situations when you just get a lot of information that is not of any particular use to you. If you fall into the habit of just filing it because it is not important, then you can easily start overlooking what is important. I recognize the need to make our inspections relevant.

Mr. Renwick: Just for the record, Mr. Chairman, I do not want endlessly to pursue items 13 and 15 on page 4 of the submission of the Institute of Chartered Accountants of Ontario to us this morning. But at a later date I want to follow up on the development of a system which would limit the necessity for mandatory reporting requirements. I would like to see this happen by developing, in conjunction with the institute, a method by which you would check all of the companies involved in it without creating, as my colleague says, an overregulated atmosphere.

The next question I would like to ask is whether or not it would be possible for you to so phrase your report on the annual audit of a trust company so as to give an indication respecting compliance with the Loan and Trust Corporations Act. In other words, it was alleged here there were breaches in the act. Would it be possible to have your regular report contain a separate paragraph indicating, with whatever qualifications are necessary, that the trust company, in your opinion, complied with the Loan and Trust Corporations Act and regulations?

Mr. Finch: As one in the practice of signing audit reports on trust companies, I think the difficulty of the specific second paragraph would hinge on what we have set out here. Are we to look at each and every item, in terms of saying the company has complied with all aspects of the act? Auditing is really a judgement call on what scope of activities you or your audit staff actually look at. Based on a sampling, which is done in a scientific manner, you conclude all the transactions in total are presented thoroughly.

Requiring us to say in an audit report that the trust company complied with the act may pose a major problem on what scope would be required to make that statement. As indicated earlier, we can respond to an audit report reflecting the specific criteria laid down by the registrar. I think in your mention earlier of items 13 and 15, which we talked about, if there were

specific criteria from the minutes of the matters that should be reported here to the registrar, we can, by testing, see that those have been met. But to put in a general paragraph would pose a new approach to scope.

Mr. LaFlair: It could include almost legal opinions as to whether certain things have been done, and it could--

Mr. Renwick: I do not want to get involved in that circuit, no. I am suggesting that with care and attention when you are considering the rules, it would be very helpful if it were possible in some way to say how you could express in your report that, since this is a regulated industry, the regulatory authority impinges a great deal on the question of the accounting, including internal controls and others, and they jibe with the statute.

I am not trying to press it to the end; if it turns out to be impossible, fine.

Mr. Bones: Mr. Selley has a comment on this matter.

Mr. Selley: First of all, it is possible, and there is precedent for auditors doing that, but it is frequently rather unsatisfactory. There is some federal legislation that deals with this in another area, not trust companies. It is not terribly satisfactory.

There already is a requirement in subsection 100(7) of the Loan and Trust Corporations Act that "the auditor in his reports shall make such statements as he considers necessary, (b) if the corporation's financial statement or annual statement is not in accordance with any requirements of this act or as prescribed by the registrar." So it can be done on a negative basis.

Mr. Renwick: Yes, I know that, but I was thinking of the other side of the coin. When you look at that language, it is very limited.

Mr. Selley: Yes, I agree.

Mr. LaFlair: The other specific questions could be added to the registrar's report as to specific things you wanted to know have been complied with, rather than a blanket statement that everything in the act had been complied with. If there were certain specific things relating to finances, they could then be checked and you could check compliance with it.

Mr. Breithaupt: It is just that I do not see how it is possible for you to have a positive statement. This act goes on for 139 pages. How can you possibly say that everything in this act has been complied with by your audit? You are not running a trust company; you are doing an audit. Surely a combination of more precise questions or requirements of the registrar, together with the negative side of reporting things that are peculiarly apparent to you, is in my view the most practical package.

It is impossible to say that everything is done in accordance with the Loan and Trust Corporations Act. You are not sitting beside the chief executive officer every day, and even he or she may not know that an error has been committed in a corporation that employs hundreds of people.

Mr. Selley: That is right.

Mr. Renwick: I have only one last question. I have monopolized too much time already.

Standard and Poor's and Moody's rate all sorts of people. Do they rate financial institutions such as trust companies or the equivalent, the savings and loan corporations, in the United States? Did I not see a bank rating the other day?

Mr. Finch: I believe here in Canada--and earlier we talked about the use of "trusco," the long and short version--the holding companies, some of which are here in Canada, are rated now by the bond rating services.

Mr. Renwick: But the actual trust companies are not?

Mr. Breithaupt: That is in Canada.

Mr. Finch: In Canada. In doing that they would be looking at the underlying trust company. To give a rating on the holding company, you look below it. But to the best of my knowledge a trust company as a separate unit out of a holding company situation is not rated.

Similarly, in the United States most of the banks, depending on the type of debt they have, may or may not get ratings. But there are a large number that are rated, yes.

Mr. Renwick: They rated the chartered banks recently, it seems to me. All I am asking is whether it is a possibility to rate the trust companies in such a way that they are A, B or C or whatever the category.

Mr. T. P. Reid: Ontario was rating Greymac. They were recommending their bonds.

12:10 p.m.

Mr. Chairman: Mr. Thompson, would you care to comment?

Mr. Renwick: I think Moody's was also rating Ontario.

Mr. T. P. Reid: It makes you wonder.

Mr. Thompson: Very, very recently, within the last year, the Dominion Bond Rating Service has got into this area, but I believe it is currently as stated. They are mostly involved with the large trustco companies, the holding companies.

Mr. Renwick: I think it would be a very valuable piece of information if there was some method by which there could be a rating developed for trust companies, so people would understand they are not all cut from the same piece of cloth in knowledge, experience or ambit of activities or scope of their operations.

Mr. T. P. Reid: That would flag it to the registrar if their rating goes down from a triple-A to a minus two--

Mr. Renwick: There may be some merit in a rating system, whether it is done by the registrar or by some outside public grading body.

Mr. Breithaupt: Certainly, when you look at the group of what we might call the junior or newer trust companies that have developed more or less in the last 20 years, compared with the larger traditional ones, it would be quite practical to have certain classes, depending upon the various framework items you have suggested. It would show which company is a full-service one, which is in a different class, neither better nor worse, but simply different, and therefore an awareness could result from that knowledge.

Mr. Renwick: But I think the Moody's classification is different to a simple straight classification. It has to do with--

Mr. Breithaupt: Yes, because presumably that is one of the assets of that holding company and its application and profitability.

Mr. Chairman: I think the discussion that is going on between the two members is all very good, but I would like to draw the committee's attention--

Mr. Renwick: It is extremely good.

Mr. Chairman: --to the fact there are others who have some questions and time is fast fleeting.

Interjections.

Mr. Chairman: Are you finished with your questions, Mr. Renwick?

Mr. Renwick: Yes, Mr. Chairman. You have been very patient.

Mr. T. P. Reid: Mr. Renwick, as usual, has covered most of the points of most members anyway, but I would like to go to items 31 and 32, in which you indicated that perhaps the auditor should have a responsibility under the federal Bank Act, which requires the reporting of matters affecting the wellbeing of the bank. It would be an unusual circumstance for you people to suggest an auditor go above his client's head and it is obviously because there are public moneys, depositors' moneys involved.

I did not quite understand how strong you were in suggesting this or how this fits in with your other recommendations. For instance, I will get stepped on here because we are not supposed to mention these matters, but at Crown Trust with the rapid escalation of what took place there, under those circumstances you would suggest that the auditor contact the registrar directly and say, "Listen, I think there is a problem here." Is that sort of the idea?

Mr. Bones: Yes. This would only apply in very unusual circumstances, but if something came to the attention of the auditor and the auditor was not satisfied with the reaction he was receiving from the management or the board of directors of the corporation, the auditor would report this to the registrar. I think it would clearly only be in very unusual and material circumstances.

On the other hand, we really were concerned where the white paper was suggesting that every letter that ever came from the auditor would go to the registrar. It would only be in unusual circumstances, but we certainly feel comfortable with some type of section to that effect in the legislation.

Mr. T. P. Reid: How it would work in effect is that the auditor will find something that says maybe the company is out of balance in its mortgage portfolio or whatever it is--who knows?--fraud, let us take anything. The auditor's first response would be to go to the chief executive officer and/or the audit committee and report these findings, if they have not been dealt with. If the auditor is not satisfied, he or she will go to the registrar. Even on an audit when you are dealing with management, you can ask, "When do I deal with management and when do I go to the board?"

The problem is not finding something. You are going to find things. Then you ask, "Why did this occur? How often has it occurred? Maybe it has been corrected. What is the attitude of management?" There are a number of factors, and you take into account how important they are. If you feel uncomfortable or you are unsatisfied with the resulting action and the response, then you take them to a higher level.

The Vice-Chairman: Did you have a supplementary, Mr. Breithaupt?

Mr. Breithaupt: Would you see legislation as being a professional responsibility to do that or simply as an opportunity that you could do it?

For example, again in this unmentionable situation, some \$15 million, as I recall, was popped into the account on December 30 because, as of December 31, certain forms required knowledge of the basis for multiple development of the company. This whole transaction seems to have occurred in three months, virtually in a number of weeks, and your audit for that year would not have been commenced in depth until springtime.

How would you ever have known that \$15 million went in one day and out the next just to deal with a paper requirement? How could you be responsible for going to the registrar, as opposed to having the management of the company know you at least had the professional right to do that, if you chose to say, "Remember, section 18 says such-and-such," to the management?

Mr. Selley: That is correct. I do not think we are in any way suggesting a positive requirement. If an event like this came to an auditor's attention after the fact, it would probably be the result of some error in the financial statements. In that case, it would be dealt with through the normal audit process. If the auditor was not satisfied with the result on the financial statements, he would qualify his audit opinion and that would be the way attention was drawn to it.

Mr. Breithaupt: So again we are setting a tone.

Mr. Selley: Yes.

Mr. T. P. Reid: Frankly, I am confused. I understood you were suggesting there should be something in the legislation, I presume partly to protect yourselves and, as my friend says, so you can say to the management: "Look, I told you about this and you are not doing anything about it. I am required under section 18 to tell the registrar." Otherwise, he is going to tell you to get the hell out of his office and get another auditor presumably.

From your response to my colleague, I got the idea it was not a requirement in the legislation as such, but rather something that would be understood by everybody.

Mr. Selley: I was dealing with a particular example. I am thinking of the kind of circumstance where, just by chance, you happen to go in to start a review of the system and three quarters of the way through the trust company's financial year you come across transactions of enormous significance that you feel are jeopardizing the whole financial viability of the institution and are seriously detrimental to depositors.

You take that to the attention of the audit committee and management, having decided the whole thing is fraudulent and an attempt by management to milk the institution dry. You are saying, "My auditor's report is not going to come out for another six months, but this is obviously not satisfactory, so I have to go to the registrar." That is the kind of situation I am thinking about.

Mr. T. P. Reid: All right. But you want that in legislation, rather than on the other side of the coin, in your own standards of rules, conducts and ethics. You would like to see that in the proposed legislation.

Mr. Selley: Yes. We need protection.

12:20 p.m.

Mr. LaFlair: It would protect the auditor when he does that. Whether it is permissive or a requirement does not make too much difference, because if that sort of situation arose and he did not report, he would put himself in a bad situation.

Mr. Crosbie: Following up on what you have been discussing, we had a presentation yesterday from real estate appraisers and, in referring to their code of ethics, they drew attention to a provision they were advocating which in effect placed as part of their code of ethics an obligation to recognize a responsibility to third parties who are influenced by the adequacy or otherwise of their professional services.

Is there any place where the chartered accountants' code of ethics recognizes a duty to third parties such as depositors in institutions such as trust companies? There has been some indication in the ministry, dealing with some auditors, that they sense that since they are acting for the company they are reluctant to talk about working papers or specifics. They want to keep it strictly to the audit report.

It is sometimes not as easy to communicate with the auditor as we think it should be. I was wondering if a recognition of some sort of third-party liability--responsibility may be a better word--would in any way change attitudes or the way the institute thinks about its responsibilities to depositors in financial institutions.

Mr. Bones: I cannot think of a specific section, unless it comes to the mind of my colleagues. When you are in public accounting, your responsibility to third parties is certainly a way of life. At all times, when we are engaged in the practice of public accounting we are aware that a considerable percentage of our output and our financial statements and reports are not just going to be used by our client. There is a great reliance by third parties on that statement.

When we are concerned the financial statement meets the requirements, the accounting standards of the handbook, we are not just thinking of our client. We know there are many other parties. As has been proven by cases in the courts, we do have a responsibility.

In the preamble to our rules of conduct there is one statement I see here, "It thus becomes a cardinal position of a member of the profession that he will not subordinate his professional judgement to the will of others, and that he expresses his conclusions honestly and impartially." I am not sure if we have anything specific. Perhaps 201, which I read out earlier, might--

Mr. Finch: The lead-in on 201 clearly indicates "ability to serve the public interest." As one who has been appointed an auditor of trust companies, I can say an auditor looks at the governing legislation. The act has always indicated he has a responsibility to the shareholders, but he also reports to the department or the registrar. We believe that is the public side of

it. I find it hard to believe an auditor would not recognize a responsibility to the depositor.

Mr. Crosbie: It might be something we could pursue when we discuss your brief further, because I appreciate your offer to explore a number of these areas. What really triggered my thinking was your reference to the "wellbeing of the bank" in paragraph 31 on page 8. One might have suggested that affecting the wellbeing of the depositors would be an equal concern and an equal trigger in making comment.

Mr. Cassidy: I have a number of questions. I am not sure if we have enough time. I recognize it is getting close to 12:30 p.m. These gentlemen are not sitting this afternoon. Perhaps we could be a bit flexible.

I do not know whether the annual reports of closely held companies are made public or whether they are only submitted to shareholders. Does Mr. Thompson know?

Mr. Thompson: Primary shareholders; they are a shareholders' audit.

Mr. Cassidy: They are not published, is that right?

Mr. Thompson: I think as a general rule of thumb they would not be, unless they are an issuer under the Ontario Securities Commission or something.

Mr. Cassidy: One of the peculiarities of the trust companies is that because they are closely held for the most part, they have not been subject to OSC rules. Therefore, if anyone felt he wanted to know what he was putting his money into, for example, he basically had to rely on very out-of-date material in the report to the registrar, or else on good faith.

I would like to know, Mr. Thompson, were you aware from auditors' reports of economic dependence being a factor in any of the companies that have been in question?

Mr. Thompson: No, that was not reported to us.

Mr. Cassidy: That was not reported.

Mr. Thompson: No.

Mr. Cassidy: I would also like to know whether, in fact, the registrar's office has lodged any complaints with the professional bodies with respect to the action or lack of action by members of the accounting profession?

Mr. Thompson: No, we have not lodged a formal complaint. Mr. Morrison made his report.

Mr. Cassidy: I see. With your institute, have any complaints been lodged in connection with accountants and trust companies?

Mr. Bones: The disciplinary process is very confidential. As far as a complaint against an individual chartered accountant is concerned, we would not be aware if any have been filed. In so far as general correspondence addressed to the executive or president of the institute is concerned, we have received none.

Just to clarify my previous comment, when you set rules of conduct or standards as you set legislation, until they are really tested you do not know how adequate they are. Based on the information up to this point, we are satisfied with our rules of conduct and if any chartered accountant was doing anything improper it would be contrary to our present rules.

If some auditor or some employee has broken one of our rules, I am not aware of it, but the rules are fairly straightforward. If someone in the detailed examination had facts that we are not aware of in this case or in the case of any chartered accountant, I would hope he would report it to our institute.

Mr. Cassidy: The reason I am asking these questions is this: It becomes almost impossible for members of the public to lodge a complaint. Normally, the only way they could become aware of what an auditor did would be through the annual reports of these companies.

When a company is closely held, those annual reports are not available. Whatever material appears in the registrar's report is his version of what is there. He does not transmit what the auditors are reporting, so I can see a real problem there.

On the other hand, I asked about economic dependence because you said there is a requirement in the handbook of the Canadian Institute of Chartered Accountants to report or disclose. I presume that means it will be disclosed in the annual report. Is that correct?

Mr. Denman: Yes. The CICA Handbook accounting standard on this issue states that when the ongoing operations of a reporting entity depend on a significant volume of business with another party, the economic dependence on that party should be disclosed and explained. That disclosure would be made in the annual audited financial statements.

Mr. Cassidy: I am hearing the registrar say that was not disclosed in the annual reports which he received from the companies. Does the registrar's office receive the annual statements of the trust companies?

Mr. Thompson: We get an annual report from the trust company--

Mr. Cassidy: You get the auditors' annual report?

Mr. Thompson: Yes, we do.

Mr. Cassidy: You do, okay.

Mr. Thompson: There is a requirement under the act, Mr. Cassidy, to that effect.

Mr. Cassidy: I appreciate that. In terms of time limits, for example, the Crown Trust rape occurred so quickly that an auditor is not going to be close to that, because basically the auditor works up to a year or so behind the event. However, the annual statement on Seaway, in particular, and possibly on Greymac, for 1981 would certainly have had to be audited at some time during 1982.

The evidence we have had is there was a very substantial degree of economic dependence, enough to be significant, it seems to me. That was not reported, according to the only person in the room who has actually seen these reports.

12:30 p.m.

What do we do about that? You say you do not think there was anything where auditors failed to do their job. I am tempted to write a letter to your institute and say, "Would you please look into it?"

It seems to me the lawyers failed severely in their professional responsibilities by being party to the kinds of transactions that went on and that accountants and possibly auditors did so as well. It has been pretty obvious that the registrar, in his function, failed abysmally in doing the job.

As a consequence, we wind up with the public, through the Canada Deposit Insurance Corp., out \$300 million to \$400 million. That drain perhaps could not have been prevented totally, but at least it could have been checked, had there been more diligence in any of those particular areas, but no one blew the whistle.

I have to say I am not satisfied with what you said here, despite the competence with which the brief is put forward. Your standards say that "a member shall not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading, whether or not the association is subject to a disclaimer of responsibility."

I do not have enough information to know whether disclosure would have been required with respect to related parties. Some of the dealings that pushed up values of properties were on a kind of "I'll scratch your back if you scratch mine" basis. Technically, the parties may not have been related, despite the fact they were in collusion, but it does seem to me that on that specific question there are more questions to be raised.

The next point is the question of value. We went through this with the appraisers yesterday, particularly because of the interest people have been taking in that rather remarkable valuation of the Cadillac Fairview properties which pushed them up to \$500 million on the basis of a discounted cash-flow projection of an income stream which included very remarkable increases in

rent they expected to achieve, plus a covenant of meeting the initial losses, which was allegedly put up by these mysterious Arabs.

Prior to that there was a lot of hyping of values by means of intercompany transfers where property went up from \$1 million to \$3 million, \$4 million, \$5 million or \$6 million. The question of value, therefore, comes in because these were not market transactions, they were intercompany transactions which were not on the open market.

Could you tell us, under the general category of accepted accounting principles, what standards of value would be applied to any real estate investment that would be held by a trust company?

Mr. Denman: The accounting standard that deals with fixed assets states that fixed assets are normally accounted for on the basis of their historical cost. The writing up of fixed asset values should not occur in ordinary circumstances.

It is recognized, however, that there may be instances where it is appropriate to reflect fixed assets at values which are different from historical costs--for example, at appraised values assigned in a reorganization. Then there are further supplementary standards which relate to disclosure of the basis of valuation, if one has taken place, and so on.

Mr. Cassidy: The assumption has been that historic values would tend to be conservative.

Mr. Denman: Yes.

Mr. Cassidy: In this case, historic values--and I think we have seen a lot of evidence in the Morrison report--tended to be on the other side, because they were trumped up by means of phoney sales.

What treatment of value would be given by an accountant where he or she became aware that maybe the valuations that were in the books were excessive because of sales that perhaps could not be supportable?

Mr. Denman: Where the fixed asset or investment is found to have incurred a loss in value which is thought to be, I think the words are "other than temporary," then the investment would be written down to the realizable value.

Mr. Cassidy: The realizable value would be something like fair market value value. Is that right?

Mr. Denman: Yes.

Mr. Cassidy: Again, it is hard to get down to specifics--probably only the discipline committee can get to that--but where the auditors became aware that there might be questions as to whether historic cost represented current realizable values, should they not have been putting notes to that effect or writing down the values in their audit statements?

Mr. Selley: An auditor would assess the value of all assets on the balance sheet to make sure that the accounting principle was being complied with. In the event that an auditor suspected, or had reason to believe, that an asset was significantly overvalued he would look at the appraisal the company had done in order to be able to reflect that value and if he was not satisfied with that appraisal, he might go out and get another one of his own. In fact, I believe, from reading the Morrison report, in one case an auditor did that.

Mr. Cassidy: Has your professional committee been looking at the actions of the auditors or accountants involved with respect to questions like these?

Mr. Bones: As I said, I am not aware that a specific complaint has been made. Just while we are talking, one thought we had is whether it is possible that our institute could receive a transcript of the hearings when the hearings of this committee are finished. At this point I guess all the institute has is the public report issued by Mr. Morrison, and to get a transcript of these hearings would be helpful for the purposes of the institute.

If any individual has any complaint about either a situation or a specific chartered accountant to pass on to the institute we would look into it.

Mr. Cassidy: I am very tempted, in fact, to write the institute and to lodge a complaint if nobody else will. I am frankly distressed over the fact that \$300 million to \$400 million of public funds have gone out. There have been no changes in personnel at the ministry. No disciplinary action has been taken against any of the professionals involved. Somehow, no one is responsible. As Mr. Rosenberg keeps pointing out, there have been no legal cases either.

If someone goes in and robs a jug milk store they get five years. There certainly seems to be somehow a double standard at stake here.

Mr. Bones: As I say, now that some of these rules have been tested, we feel the rules are adequate, but whether someone has broken the rules is a matter of obtaining the information. In some of the data we have, there is a lot of information. Even in reading the Morrison report, in the same sentence it says, "Well, maybe this was withheld from the auditor, or maybe this."

So we do not necessarily have the facts. We would be interested, certainly, as an institute, in receiving any of the facts that occurred in any of these situations and then to assess whether any individual broke the rules.

The Acting Chairman (Mr. Gillies): I caution you again, Mr. Cassidy and gentlemen, that it is not our purpose in this committee to discuss specific instances that may be subject to criminal or other investigation at this time. As long as we keep the discussion on the matter of principle and practice, that is all right.

Mr. Bones: I think one principle is if any chartered accountant in Ontario is not following the handbook or following our rules on conduct or competence, I can assure you that the Institute of Chartered Accountants of Ontario would want to investigate that matter as quickly as possible, as thoroughly and fairly as possible too.

Mr. Cassidy: There is a general problem that goes far beyond your profession and that is that no one in the society seems to be prepared to sort of stand up and resign on principle.

The fact is that at Crown, no one actually blew the whistle on what was happening, which was effectively the only way of controlling the rape of that company. If someone had called up the Globe and Mail and said, "I worked for Crown Life and Crown Trust until 10 minutes ago and I want to tell you what is happening there," that would have been the only way in which that really could have been stopped.

Let me ask you about the role or the professional responsibilities of someone who is a chartered accountant, a member of your institute, and who would work within a trust company where events of the nature of the ones we have seen recently are occurring. What, if any, are their professional responsibilities if they become aware of such things as phoney evaluations being used in order to justify an increase in the borrowing base?

12:40 p.m.

Mr. Bones: There is no difference in our rules. They apply to every chartered accountant in Ontario. For an individual within Ontario to use the designation "chartered accountant" he must belong to the Institute of Chartered Accountants of Ontario. Every member, every student, falls under these rules and whether the individual is in public practice, an employee of government, an employee in industry, whatever the individual's occupation, the rules regarding competence, conduct and ethics particularly are applicable to every chartered accountant.

Mr. Cassidy: Mr. Thompson, would it be normal in any of these trust companies that, first, CAs would be employed and, second, that at least on a monthly basis they would be involved in making reports about the state of the financial affairs of the company?

Mr. Thompson: Speaking generally on it, I would think most trust companies have a CA in the position of either vice-president of finance or controller in some form.

Mr. Cassidy: So you are saying, then, that their professional responsibilities are in fact--

What would happen if a CA became aware of a deal that was going through where, in effect, normal procedures were not being followed; where it was not just a matter of a modest difference in a judgement call, but where there was prima facie evidence that this was grossly deleterious in what it did to the financial

treatment of the company? Would his responsibility be simply to inform senior management and would his responsibility stop then? Or would his responsibility as a professional go further?

Mr. Bones: His first responsibility is for his own conduct.

For example, I am familiar with one actual case in which an individual who was highly regarded by the community for some reason signed income tax returns for the company he was employed by, and the returns were false. In this particular case the individual was expelled from membership in the institute--that was some time ago--and has never been readmitted.

He had reasons, but, on the other hand, he was the individual who signed these false returns. There was no monetary benefit to the individual whatsoever, but he was expelled.

So the first situation is that an individual who is employed in a company, just like the auditor, is expected to use judgement, in particular when it comes to signing something.

From reading the Morrison report I guess in some of these situations maybe an employee knows something; maybe it is just a matter that he does not know something and he is asking questions like, "Where are the documents?" But I think it is up to each individual to use his judgement.

Mr. Cassidy: What is the disciplinary treatment of someone who, let us say, knows this is going on but uses his judgement, basically does not look too far to get all the details and lets the deal be worked around him without being directly involved?

Mr. Bones: He would have to worry about his legal position and the fiduciary duty to his company--that, and then he has a reporting responsibility. If he has signed a report that is false, then he is at risk under our rules.

I do not think there is a requirement under the act that there be a report to the registrar by an employee within a company if he thinks there is something going wrong there.

Mr. Cassidy: Probably only the auditor would make that kind of report, is that right? The auditor comes in only once a year. He does not audit quarterly statements, does he?

Mr. Bones: No.

Mr. Finch: But they may well be in more than once during a year. You do testings and assistance throughout the year, and the bulk of the work is all after the year-end.

Mr. Cassidy: Yes. But it says that when they refer to the auditor in his reports, if they are testing the system, the auditor is not required to report regularly to--

Mr. Finch: Not to the registrar or the federal department, in the case of a federal company.

Mr. Cassidy: Now, in the case of the--

The Acting Chairman: Will you conclude fairly soon, Mr. Cassidy? We are running late and we have one more questioner.

Mr. Cassidy: I think this is important.

The Acting Chairman: I appreciate that it is important, but time is a consideration.

Mr. Cassidy: Would the obligation not to associate oneself with any report or financial statement that the accountant knows or should know is false and misleading include internal reports, which are, say, submitted to management in a company?

Mr. Bones: Certainly.

Mr. Cassidy: In your disciplinary proceedings do you have a means of looking at that kind of information?

Mr. Bones: The actual disciplinary process acts upon complaints that are made. It could be a complaint from the public or it could be that the institute notices and makes a complaint. But it would take a complaint; so, particularly if it is an internal document within a corporation and unless we read about it in the newspaper, we would not know about it.

Mr. Cassidy: I see. There is a 75 per cent rule on mortgages entered into by trust companies, and clearly that was not adhered to. The values of properties were driven up and then mortgages were put on that were effectively there for substantially in excess of 75 per cent of market value.

Because the mortgage may or may not be valid, what would be the accounting treatment of a mortgage in that case where it exceeded the regulatory limit as a proportion of the value of the property?

Mr. LaFlair: I take it they were taking the position that the value was there based on their appraisal.

Mr. Cassidy: They had a \$1-million property and they wound up with a \$1.25-million mortgage on it because in various ways they had got the value up to \$1.75 million.

Mr. LaFlair: Their cash ran out; so they would have recorded that as a mortgage. If someone came along, say the auditor at the end of the year, he might say: "That value is not there. I cannot see how you are going to collect that mortgage." That is basically what he is going to have to assess at the end of the year: Is there value there for that mortgage? It is going to be collected. And if it has to be written down, then they will have a write-off through the profit.

Mr. Cassidy: Essentially, where the mortgage has been

pushed up to, say, 99 per cent of the value of the property, then using generally accepted accounting principles the auditor would write that mortgage down to a more appropriate value. Is that right?

Mr. Finch: Not if he were satisfied that the valuation supported the amount of the loan. There are two problems in the example you have given. One is a loan in excess of the limits permitted by the department.

As part of his procedures, an auditor would be reviewing that loan to meet the 75 per cent debt or treating it as (inaudible) investment or some other matter. But if he felt he still had an adequate appraisal to support the 99 per cent value, then because of it being that close, he may get another appraisal--he would look hard at whether or not that appraisal could be taken--and review the income stream from the mortgage thereafter.

In other words, if you write the mortgage up, presumably some payment has been to be made, either on interest or principal. You measure many factors, but you may well question whether the loan is collectable.

Mr. Cassidy: I think I have expressed my concerns to you. I have been asked to desist because of the time.

My final point is that you have a complaints procedure but, essentially, where there is a closely held company doing business with the public there is no hook on which the public can really complain.

If there were even an obligation that any trust company to do business, whether closely held or not, had to publish an annual report--which is the very least we should be looking for--and meet certain standards (inaudible) under the ICAO's jurisdiction, then at least the public could say: "I have read that damned report and it was misleading." But right now one cannot even say that.

The Acting Chairman: Thank you, Mr. Cassidy. Mr. Stevenson.

Mr. Stevenson: Very briefly, on page 7, number 27 in your brief you mention a financial advisory committee. Is that the investment committee that is on page 31 of the white paper?

Mr. Bones: No. It is page 14, number 3.

Mr. Stevenson: Okay. Thank you. That answers my question.

The Acting Chairman: On behalf of the committee, gentlemen, thank you for your presentation. I will have the clerk send you a transcript of the proceedings so you can pursue that matter, Mr. Bones.

The committee stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 12:49 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

THURSDAY, FEBRUARY 16, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From Hughes, King and Co. Ltd.:
Finley, J. R., Legal counsel
King, C. W., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 16, 1984

The committee met at 10:03 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: The first witness will be Hughes, King and Co. Ltd.; C. Wallis King, president, and John R. Finley, QC, legal counsel. Gentlemen, please come forward.

Mr. Renwick: Mr. King, along with his colleague Mr. Finley, has become quite used to these meetings with us.

Mr. Mitchell: He has requested honorary membership.

Mr. Renwick: We may be able to give Mr. King a QC, if he keeps coming.

Mr. Chairman: If you recommend him, he may get it.

Mr. Renwick: I doubt it. It hasn't happened yet.

Mr. Chairman: Why don't we try?

Mr. Renwick: When I get asked to write a letter of recommendation to Roy McMurtry about a QC, I always write back and say, "If you really knew what it was all about, you would be better off without it."

Mr. Chairman: The clerk is distributing Mr. King's prepared text. As soon as he is finished, Mr. King, you may proceed.

HUGHES, KING AND CO. LTD.

Mr. King: Thank you, Mr. Chairman. Gentlemen, this morning we are responding to the invitation to participate in the committee's review of the white paper on proposals for review of the loan and trust corporations legislation.

I think you perhaps know some of this now. I have been continuously engaged in the industry since 1958 as an employee and later as a financial consultant. At the present time, I am president of Hughes King and Co. Ltd., financial and investment counsel. In November-December 1982, my firm was retained by four insurance companies and one trust company to prevent the amalgamation of Greymac Trust Co. with Crown Trust Co.

As an outgrowth of this engagement, the writer has been currently representing approximately 800 of the preference shareholders of Crown Trust, the innocent victims of the seizure

of the company by the government last January 7, 1983. In this capacity, I appeared before the committee during its considerations of Bill 212 and Bill 215. In addition, I am a director and member of the executive committee of the Municipal Financial Corp., one of whose subsidiaries, Municipal Savings and Loan Corp., is a registrant under the Loan and Trust Corporations Act.

The history and economic background of the industry is quite well set out in the white paper. However, it is worth while noting in particular several recent trends.

Trust companies initially commenced business to provide fiduciary services covering estates, trusts and agencies, otherwise referred to in my report as ETA. This emphasis prevailed until almost the end of the 1950s. The Royal Trust Co. was the last major company to enter the financial intermediary business in 1962.

Today, trust company presidents are directing their entire attention to competing with the chartered banks, so much so that the public perceives little or no difference between banks, trust companies and loan companies. It is important this be borne in mind.

Of the 20 trust companies registered in Ontario prior to the seizures, only three address the ETA business in a serious manner. Virtually all the trust companies registered in the last two decades make no attempt to provide traditional services, yet the large trust companies grew to the size they are today because of the ETA business, not despite it.

The industry would lead you to believe the ETA business is unprofitable and the personnel requirements for such operations are difficult to develop. However, it is interesting to note that the largest trust companies still do provide these services, albeit with less emphasis and, regrettably, less professionalism.

This is borne out by the many horror stories that circulate regarding ETA services of trust companies. In my opinion, citizens of this province are poorly served by the trust industry with respect to fiduciary business.

In the past, the industry has been well regulated. I agree with the statements of the Porter royal commission--see page 2 of the white paper. I also agree with the statements of the 1969 royal commission.

The trust and loan industry has enjoyed a good working relationship with the regulatory authorities and has been perceived by the public as an industry exhibiting the highest integrity. The problems in the industry have only arisen in the last two years.

As highly leveraged real estate operators were being squeezed by their traditional bankers as a result of unprecedented high interest rates, they turned to the trust industry where, in effect, they could raise capital at will and bypass the bankers.

Hence, many trust and loan companies were acquired or started by people who were real estate oriented and not imbued with a sense of fiduciary responsibility requisite for an ETA business; nor were they experienced in the industry.

Why the regulatory authorities were not able to deal with this development under the regulatory climate that existed remains a distinct mystery to me. There is evidence to suggest that approvals were given to new owners regardless of their lack of experience in the industry. Indeed, it appears the regulatory authorities had been aware for some time that trust companies were participating in the inappropriate real estate transactions that were revealed in the Morrison report.

The power of government, as found in Bill 212, An Act to amend the Loan and Trust Corporations Act, passed on December 21, 1982, to seize loan and trust companies in the event of serious abuse of their powers, is appropriate. What is inappropriate is the fact that there is no provision for a hearing either before or after such a seizure has taken place. We are all well aware of the government's almost total lack of disclosure of information since the seizure of the loan and trust companies last January 7. As a result, it is difficult to assess the propriety of the government's actions.

10:10 a.m.

It is noted that the white paper proposes to maintain this power to seize without provision for a hearing either before or within a stated period of time after the seizure. Surely the government must be held accountable and subject itself to account within a reasonable time frame. To do anything less is an affront to the democratic process and rules of natural justice.

I note that subsection 10(3) of Bill 215 does grant an exemption to the usual crown immunity. It provides an action may be brought against the crown in certain instances. There is no proposal that this provision be re-enacted in the new act and, in any event, I question its value, particularly where the registrar has the power to seize a company and not hold a hearing.

The onus would be on the corporation affected to establish that the registrar had acted improperly. This would be particularly difficult to do when there has not been a hearing. Also, it is not a difficult task to establish after the fact that one was acting in good faith.

The objectives set out in the paper are commendable. However, emphasis should be directed to the industry itself to achieve these objectives through self-regulation, standards of conduct, education and experienced personnel. Further, members of the trust industry must have the capability and responsibility of exercising sound and prudent judgement, and cannot assume that those dealing with them are acting in a similar fashion.

Any regulatory framework is effective only if it is administered carefully and completely. Unfortunately, at this time, we do not know if there were problems in the administration

of the Loan and Trust Corporations Act as it stood as of December 20, 1982.

There certainly are indications there were some difficulties. In attempting to reform the regulatory framework without a full and complete examination of the present system, one runs the risk of perpetuating existing problems in the administration of the act.

While the Morrison inquiry did conduct an examination of trust companies' operations--albeit a somewhat one-sided examination as there was no cross-examination of witnesses nor were interested parties entitled to call their own witnesses--there was not a similar examination of the practices and procedures of those responsible for administering the act.

I am aware of three government papers--the special report, the internal report and the white paper--that reviewed the actions of the government with respect to Crown Trust, Greymac Trust and Seaway Trust companies. However, at no time have the officials or their actions been subjected to an independent public examination.

The white paper does recognize that the corporations must continue as viable and profitable business enterprises. Without the continuing infusion of equity capital from the public, a trust and loan corporation cannot grow. It is a capital intensive industry. In order to attract capital, the companies must be able to provide a reasonable return on investment. I am concerned the proposals will provide such an onerous regulatory framework that they will no longer be able to attract sufficient capital from potential investors.

The tradition of confidentiality for those in fiduciary relationships must continue to exist. This confidentiality, for example, is undermined by the present requirements in INS. Form 33 that the names of borrowers be revealed. If the government does see fit to continue this requirement, I would question the dollar value at which the reporting requirement is triggered. Many business people maintain collateral loans in excess of \$50,000. It is not unusual for a consumer loan to exceed \$10,000, and even small commercial transactions regularly are in excess of \$250,000.

Not only does this requirement offend against the tradition of confidentiality, but as it stands now it will lead to excessive reporting that will be of questionable value. In other words, the sheer volume may render the information useless. At the very least, borrowers should be advised that details of such loans are being reported to regulatory authorities. This, of course, for the sake of consistency raises the question as to why deposits of comparable size are not reported as well.

It is interesting to note the issue of confidentiality was raised in the white paper with respect to commercial lending and the segregation of funds. It was recognized the improper use of information was a difficulty and the whole issue needed to be addressed. In theory the segregation of funds is not a bad idea, but in practice it does not work. Surely this difficulty would be increased if the information required in form 33 was regularly

reported. Incidentally, that is an annual report, but there is also a monthly one that is almost as onerous.

I find offensive the proposal to permit the registrar to appoint interim or substitute trustees subject only to the approval of the courts and without the consent of the interested parties. The settlor, or the beneficiary if the settlor is not available, ought to have some input in the choice of the new trustee. This power on the registrar's part once again undermines the fiduciary relationship and the concept of confidentiality.

The minimum capital requirement provisions in the white paper appear appropriate in the light of current business operations. However, it is inaccurate to suggest a company providing full ETA business should have a minimum capital of \$10 million. To operate an ETA business, in essence, requires only sufficient capital to operate an overhead appropriate to the size of business. There are many consulting and legal firms offering ETA services today who do not have or need such capital. If we are to develop the traditional business of trust companies, there should be a mechanism regarding capital that would encourage rather than discourage trust companies to take fiduciary business seriously.

The prohibitions against regulated companies purchasing goods or management services except with the prior approval of the registrar appears to be unduly harsh and cumbersome. Such practices may well lead to inefficiencies, the costs of which will be borne by the consumer. These practices are common in business and at times desirable and necessary.

The writer's concern is the criticism that could arise with the registrar as to his involvement in management decisions on a day-to-day basis. In fact, the whole area of involvement in the selection of the chief executive officer, chief financial officer, removal or resignation of directors creates a climate that removes significant judgement from those who hold responsibility and upon whom statutory obligations are imposed. One wonders, for example, what liability or responsibility the registrar's office could or would assume for any action taken either at its direction or with its approval.

I would like to deal with the concept of regionality, which is not dealt with in the report, but I consider it a matter that should have your consideration. A number of trust and loan companies successfully direct the emphasis of their business to particular regions or particular services that are tailored to the community in which they operate. I believe this should be encouraged and supported.

Schedule A banks, for instance, are simply too cumbersome and do not have the local knowledge to deal with problems and aspirations of northern areas. If our province is to expand and encourage population shifts into northern areas, tourism and small business, and respond to our agricultural needs, it seems desirable that capitalization requirements, investment restrictions, etc., should be so designed as to permit an environment that would encourage broad-based development.

At present, a test of public convenience and necessity is applied to the siting of the head office of a loan and trust company. This does help to foster the concept of regionality. It is proposed this test be used when considering whether to approve the acquisition or merger of loan and trust companies. I am concerned this will import a political element into the approval process which is inappropriate and which was discussed in the media coverage relating to the licensing of Astra Trust by the federal authorities and Re-Mor by the provincial authorities.

It should be noted, with respect to trust companies, trust and deposit funds are one and the same. This is not so with respect to loan companies. In the light of the public's perception that loan and trust companies have the same duties and obligations, I am in agreement with the recommendation that the fiduciary obligations of a trust company with respect to deposits should be extended to loan companies.

I am unable to understand why it is proposed that trust and loan companies not be permitted to handle mutual funds as part of their fiduciary business. It would seem they are ideally suited to do so. In the writer's experience, common trust funds have been used for years to advantage by trust companies providing efficiencies of administration, liquidity and economies of scale, particularly to small estates and trusts.

10:20 a.m.

In conclusion, the seizure of three trust companies represented a draconian response to what we have been led to believe was an urgent situation. Before we proceed with major reforms based on those events, there should be laid before the public a full independent accounting of the actions of both government and the trust companies involved in these events. My responses to the specific proposals contained in the white paper must be read with this in mind.

Mr. Chairman, those are my prepared remarks, and I would be happy to respond to any questions.

Mr. MacQuarrie: This is on a point of order. In view of the comments made in the report with respect to the action by the ministry, suggesting there has not been full disclosure and the rest, I wonder if the ministry would care to comment on the brief or answer part of it.

Mr. Boudria: The procedure is somewhat not the way we usually do it, is it not?

Hon. Mr. Elgie: Mr. King is here to present his views, and if the chairman feels that any part of it is inappropriate, then he should say so as it is presented. I have no problem with respect to the issue Mr. King has raised in his brief. It is an issue that is not a new one, namely, that the procedures that were utilized in respect to the takeover of the assets of the various trust companies on January 7 is an issue that has been and remains before the courts.

It is an issue which Mr. King, on behalf of the preferred shareholders, joined with one of the parties in an application for judicial review. The Supreme Court has dealt with that and has directed the parties along the path they should follow in pursuing that activity. That is as far as I care to comment at this moment, other than to say I think if Mr. King has been following the committee process in this House and activities in the Legislature regarding question period and other areas, that there certainly has been a full discussion of events and the government has tabled and released information with respect to the registrar's activities.

Mr. Chairman: In the light of the minister's comments, I think we should go to the line of questioning. Mr. Boudria, I think you are first on the list.

Mr. Boudria: Mr. King, either I missed it in your brief or it is not there, but I did not see any comments on the 10 per cent ceiling.

Mr. King: On ownership?

Mr. Boudria: Yes.

Mr. King: Yes, I noted that and, frankly, there is quite a satisfactory history of principal ownership that has been very good for the development of trust companies, Hamilton Trust, for example, originally. My own company, Municipal Savings and Loan Corp., has a majority controller. The thing I would have preferred to have seen in the report is some relationship to minority shareholders.

We infringe on the free enterprise system by unduly controlling those things. Crown Trust was virtually controlled by a single person for many years, and it rose to be one of the finest institutions in the land.

Mr. Boudria: You are saying this, notwithstanding what is happening right now, that saw 800 separate shareholders--

Mr. King: Yes. I think it is more of a regulatory control situation. In defence of the registrar, he was terribly undermanned and things were moving at a fast pace. On the other hand, as I mentioned, approvals were given. For example, Greymac acquired Crown Trust in October 1982--I have been in touch with people in Canwest Capital Corp. and they did phone the registrar to see if he had any objection and so forth. It was reported to me that there were no negative views.

Preferred share capital for Seaway Trust was authorized in August 1982. The matters were raised in the internal white paper, for example, talking about restricted licensing or limiting licences to a month and a week and things like that, but none of that was reported to other registrants, let alone to the public. I suppose the argument is if you are licensed for a day, you are licensed. Here was capital being authorized and so on. I am sure the registrar has a response to these. Perhaps he did not have the capacity to do otherwise but respond to the request.

It seems incredible to me that when these companies were under such close observation with regard to the restriction of licences that this was not revealed to the public. For instance, the federal department of insurance publicly disclosed that Fidelity Trust's licence was cut to six months, to one month, to one week or one day or something, and members of the public were able to respond to that concern. They could take out their deposits or whatever.

Mr. Boudria: You are saying the same information should have been available all along in respect to these companies, and obviously it was not.

Mr. King: Right. A number of registrants were embarrassed by this. They were doing financing and such things not knowing any of this existed, or at least it never came to light.

Mr. Boudria: On the other hand, you also say regulatory authorities had been aware for some time that the trust companies were participating in the inappropriate real estate transactions that were revealed in the Morrison report on page 3. What evidence do you have of their knowing of things well ahead of time, other than the one you just referred to, cutting down the licensing?

Mr. King: I had trouble getting it, but the internal review--

Mr. Boudria: You had trouble getting it?

Mr. King: It did not seem to be available.

Interjection: There were not many copies.

Mr. King: In this report, the internal committee that was set up to look into this matter certainly makes reference to transactions that have gone on for upwards of two years.

Mr. Boudria: When were you personally aware of things going wrong in this regard?

Mr. King: I would say--

Mr. MacQuarrie: On a point of order, Mr. Chairman: I do not want to interfere with Mr. King's response to questions, but it is my understanding a number of civil proceedings are currently before the courts. It is also my understanding a considerable number of criminal proceedings might well be launched. Mr. King, have you been a party to any of the litigation that has gone on this far?

Mr. King: Yes. Not now, but on behalf of preferred shareholders of Crown Trust we attempted to determine whether these amendments were legal or not. To that extent, I have.

Mr. MacQuarrie: Are you likely to be involved in any of the litigation directly or indirectly as a witness? Has anyone given any indication to you that you might be called?

Mr. King: No, except I have filed an affidavit on behalf of the preferred shareholders.

Mr. MacQuarrie: In one of the actions?

Mr. King: As an intervener in one of the actions.

Mr. MacQuarrie: With respect, Mr. Chairman, I think we are getting on to some thin ice here with this line of questioning.

Mr. Boudria: On the same point of order: I asked when the witness became personally aware of things going wrong with the trust company. I am not asking him to make comments on the trust company itself but rather on when he became aware of the situation. Surely he knows when he became aware of the situation and responding to that question does not affect anything else. I am not asking him to pass judgement on it.

Mr. King: I was not aware of it until the actions by the government took place.

Mr. Boudria: That is all I wanted to know.

Mr. King: We acted to stop the amalgamation of Crown Trust and Greymac. The concerns we had there have been reported substantially in previous hearings. To answer your question, it was not until late December or January that it was obvious something was amiss.

Mr. Boudria: That is exactly the point I was trying to get at. Even though public authorities seem to have known for some time before, Mr. King, who has had considerable dealings in this issue, did not become aware until the whole thing was over. That is exactly what I am trying to find out.

Mr. MacQuarrie: You found out.

Mr. Boudria: I sure did.

Hon. Mr. Elgie: May I ask a supplementary?

Mr. Chairman: Yes, you may.

10:30 a.m.

Hon. Mr. Elgie: I do not argue with the question. What you are saying, and the committee should consider this as it reviews the white paper because we are always open to reasonable suggestions, is that where a limitation is placed on a company's licence, whether it is by private agreement, by the registrar putting an order on the register of the company or by obtaining a court order, whatever the circumstances of the limitation, he should immediately publicize that.

Mr. King: I think it should be reported.

Hon. Mr. Elgie: Should the reasons for that be published? Or do you think that in the case of a legitimate operation having temporary problems it would jeopardize its viability?

Mr. King: Yes. I think there should be an explanation as to why the licence has been--

Hon. Mr. Elgie: I do not argue with it; I am just saying it is a good point.

Mr. King: I think it should be reported. In the case of Fidelity it was reported that the licence was restricted due to a capital deficiency and that there were attempts being made to rectify it by finding more capital and so on. It should not be embellished or mitigated. It should be reported that the licence is restricted pending the input of further capital. I think the president or chief executive officer of the company can respond by saying they are in the process of raising it and they expect a satisfactory resolution of the matter.

Hon. Mr. Elgie: I cannot argue with that. Do you have any comments on that, Mr. Thompson? Do you see any problem with that concept?

Mr. Thompson: No. The register is a public document--

Hon. Mr. Elgie: In terms of any circumstances as I outlined it: by private agreement signed between the parties, etc.?

Mr. Thompson: --so it is there and available. The question is, should there be a publication of some form? I would be very interested to know where might be a good place to put it. Maybe it would be on the Dow Jones.

Mr. King: Since 1978, under the disclosure rules of the Ontario Securities Commission, the government has been very keen that disclosure should be made, good or bad. I think a modest publication from your branch would be most appropriate. If the shareholders of Crown Trust had known licences were being restricted because of concerns of the department that reports were being late and so on, it would make these companies pull up their socks and make sure they get their filings in on time and things like that.

But I do point out that some of these filings are pretty horrendous. Here are the bare bones of an INS Form 33, and you know the ones you get are about four times that thick simply because of reporting \$10,000 loans, with people's names, reasons for the loans and things like that.

Mr. Crosbie: Mr. King, before we get too far away from your comment, you just suggested the Crown Trust licence was on a short term.

Mr. King: No. It was not.

Mr. Crosbie: That is what you just said.

Mr. King: No. It was not. It was the other trust companies. Crown Trust is a separate thing. I am making a general point to try to respond to the white paper, actually.

Hon. Mr. Elgie: I took it as a general point.

Mr. T. P. Reid: How about the Ontario Gazette?

Mr. Renwick: Everybody reads it.

Hon. Mr. Elgie: It is widely read in Riverdale.

Mr. T. P. Reid: I take up 1,000 copies every week.

Mr. King: Mr. Thompson, how does your federal counterpart--that was in the paper--he must have made some--

Mr. Thompson: I do not think their system is any different. I stand to be corrected, but I think they just note it on the registration, and that is a public document; it is a question of coming to search.

You made reference to Fidelity. That was a very public issue, perhaps because of the party it involved, but that was responding to requests from newspapers, etc., since it was obviously--

Mr. King: Public companies have to report quarterly, for example. Maybe that should be a provision in the report if they have had difficulty in the licensing or whatever it was.

Mr. Cassidy: With respect, speaking from one of my previous incarnations as a financial journalist, if somebody is on the register in what is seen as a fairly obscure government department, it is not going to be looked at unless there is a real reason.

For example, many of the particulars of a lot of the mortgages we have been discussing in these cases are also matters of public record because they are involved in the registry office, but it takes a great deal of expertise to be able to thread your way through that and you do so at your peril as well because, if you make a mistake, you may be actionable and that kind of thing.

It seems to me that with the Ontario Securities Commission, for example, there is a precedent for making a great deal of information public. As a matter of course, the OSC releases it to the press and it is carried on the news wires. It is an anomaly that trust companies are not only exempted from the OSC standards of disclosure, but the regulatory actions relating to trust companies are hidden, whereas regulatory actions with respect to companies under the OSC are made public in a very timely way.

Mr. Chairman: Mr. Boudria.

Mr. Boudria: I am afraid I have to leave temporarily. I will try to get back on later.

Mr. Breithaupt: The question I wanted to ask was to take--

Mr. Renwick: May I just ask a question?

Mr. Breithaupt: Yes, go ahead.

Mr. Renwick: What would prevent a system under which the registrar simply issued a statement every time there was a change in the registry? He can also publish it in the Ontario Gazette if you need some formal backing. But why should it not be possible to leave it up to the business and financial community to make their own judgement as to whether they want to comment on it or not? The communications world is not all that closed these days.

Hon. Mr. Elgie: Certainly it is on the registry, so it is available to the public. Do you have any comments on that, deputy?

Mr. Crosbie: Yes. I would support the general concept. In the course of reviewing this with some American authorities, they made the point that historically banks and banking institutions having enjoyed a level of confidentiality about their operations that, as Mr. King has pointed out, has not been enjoyed by other types of securities. The observation of the American adviser we were talking to was that he sees the trend in the United States going quite definitely towards a more open disclosure of banking institutions, and it would seem to me that that might be an appropriate move in this country as well.

I personally do not see anything wrong with the concept. I think traditionally what people have been concerned with is that if there is something wrong with a company that may not be fatal--it may be some benign neglect of management or something--if it is being corrected, a public announcement of it might be more detrimental to the company than it deserves to be.

Mr. Renwick: I do not think the government should be making judgements. As Mr. Thompson said, the registry itself is public. All I was suggesting is that every time there is a change, the registrar issue a public statement and leave it up to other people. It would become part of the material that went out about financial institutions.

I certainly think it would be most unwise, if I may use the minister's words, to pick and choose between legitimate businesses having temporary troubles and others, because those are judgements. But if every change is by publication and a release, then you leave it up to the financial and business communities to decide whether or not it is of significance in their world.

Hon. Mr. Elgie: I do not have any fundamental objection to it; I think disclosure is certainly valuable. I do have the concern--and members of your own party, you will recall, have

expressed it--that if the registrar was aware of a problem, was dealing with it and felt he could see daylight down the road, he could see that there could be severe detriment to the company if that kind of information became public.

I understand what you are saying. It leaves a degree of judgement in the hands of the registrar that troubles you.

Mr. Renwick: Which is removed if every change in the registry is published.

Hon. Mr. Elgie: If you do it with everybody.

Mr. Renwick: Then you let the people who are in the business make their own assessment of the significance or meaning of it and you are not engaged in judgemental questions about whether it is a legitimate business in temporary difficulty or some other kind of business. There are legitimate businesses where temporary troubles have become permanent.

Hon. Mr. Elgie: You do not think it would hinder a business in trying to raise capital? Say it was a capital deficiency, you do not think it would give them any problem as they endeavour to raise capital for that procedure?

Mr. Mitchell: But if that should apply, if I may just interject, do you think what has been suggested should then apply to all companies that are involved in any way, shape or form in financial--

Mr. Renwick: All the companies that are on the registrar's registry. There are 94 of them.

Mr. Cassidy: What are you thinking of, Bob? What other kind of company?

10:40 a.m.

Mr. Mitchell: For example, Mr. King is here. He is a financial consultant. He is giving advice. I am not suggesting there is anything wrong with Mr. King's firm. I am just asking, how far do we go with it?

It has been suggested this be done and I do not object to it. I think maybe it is a good step, but I am wondering how far you go. You begin to give the public so much information and if they get used to it then they are obviously going to want--

Mr. T. P. Reid: They might want more.

Interjections.

Mr. Chairman: Excuse, Mr. Finley, you had a comment.

Mr. Finley: If I could make a brief comment. I think the point you raise is in place there. Mr. King, as a financial analyst, is registered with the Ontario Securities Commission and

if there is a change in his registration the Ontario Securities Commission will publish that.

Mr. Mitchell: In his case, yes, because he is with the Ontario Securities Commission, but I am thinking about a lot of stuff on the news a while back about the so-called "mortgage arrangers" and that sort of thing.

Mr. Finley: The point I want to make is that one of the devices that has proved very useful in regulatory schemes within the last 20 years is the matter of potential publicity. This is used in many regulatory areas of government.

The registrar could say, "You have two days to clean this up," or, "Show me you are going to clean it up and if you do not, I am going to issue an order and it will be published." Then you will see some action a lot faster than if you do not have that threat. The threat of publicity has a great ability to bring the deviants back to their proper roadway.

Mr. Mitchell: Part of the reason for my question also flows from some of the comments made yesterday about the way names are used and the impression people get from them. There appears to be the whole area dealing with mortgages. I am not a financial expert, I do not profess to be, but there seems to be such a proliferation out there. I think if you are going to do it with one segment of society or the business community it should be done with them all.

Mr. Chairman: I think we are getting a little off the track here. I have Mr. Cassidy after Mr. Breithaupt. We seem to have gone around the table and we should be back to Mr. Breithaupt.

Mr. Breithaupt: The observation I would make on this last point is the information that is provided will have to be simply factual and not bring the kind of value judgements that would cause disruption or possible unfairness to any situation.

If you look at the OSC bulletin, for example, a great variety of items, in the way of orders and comments about changes in percentages, insider trading and a variety of other things, are published simply as matters of fact. It may well be that, under the new regime that will flow from this white paper, one of the appropriate things the registrar dealing with the loan and trust area should do is have a weekly or biweekly bulletin, however it might be. Those people who are peculiarly interested in the operations of trust companies will know where to look for readily available, up-to-date information of the routine decisions made. That might indeed be useful.

I was interested in your comments on page 7 with respect to the minimum capitalization of \$10 million as it would refer to the company providing full estates, trusts and agencies business. You refer to the fact that a variety of legal firms and others handling estates or dealing with matters have no capitalization requirements to protect those funds, although one could presume that either under errors and omissions insurance or under the

prospective claim with respect to the law society, some other forms of protection at least are possible.

I would like to hear from Mr. Thompson as to whether this comment on the ETA operation is a practical one that would take it away really from the requirement of the \$10-million fee, or is it simply a matter of requiring further substantial personal commitment in the way of dollars from the people who are going to be involved, to show the seriousness of their interest in the whole trust company theme?

Mr. Thompson: Yes. The brief separates it with respect to the estates, trusts and agencies business. In dealing with that item alone, it is important to remember an order in council is required to permit a trust company to fulfil the function in a personal estate, with respect to a surrogate court or the Supreme Court.

The effect of that is the trust company does not have to file a performance bond with the court. There is a presumption there that there is a capital base to fulfil the potential liabilities that may be involved in the administration of an estate. Part of the concept of total capitalization there must be some assurance to negate the necessity of filing that special bond with the court so that it is part of the capitalization process.

Mr. Breithaupt: Do you think this capitalization increase will give a sufficient cushion to continue the practice of not having to regularly file that kind of bond?

Mr. Thompson: Yes. It is a part of it. The concept there of a full-service trust company, of course, includes other aspects besides ETA alone. It would include a concept of operating in a number of branches, etc. One of the particular components of ETA is capitalization of the trust company. It is important because there is no bond filed in the court for performance.

Mr. Breithaupt: Mr. King, you then went on to say the registrar's involvement with management decisions on a day-to-day basis would be somewhat impractical. Yesterday, the Institute of Chartered Accountants of Ontario was before us. As we discussed the audit and the expectation they might, in their notes to financial reports, give some review, observation or guarantee the act was being fully attended to, we decided it was virtually impossible for them to make that kind of statement, unless they happened to be sitting beside the chief executive officer every day.

We talked yesterday to a degree on this management decision theme. One comment made was to perhaps have the usual application of the law respecting fraud or contract matters, together with apparent exemptions to which notes in the financial statements could refer, rather than the general theme saying, "It looks as though everything is in order."

Those two themes, the traditional one of the law or some changes in the registrar's reports to note peculiarities or, indeed, the opportunity within the act for an auditor to have the

option of access to the registrar without the client's permission or acquiescence, were the kinds of things that might be a better way of keeping the responsibilities separate and yet making sure the registrar had the opportunity to act, if necessary.

Would you have any observation on that kind of approach? I realize you are not an accountant and are therefore not involved in that particular area, but as a consultant and an observer to these various relationships, is there anything you could develop on that theme for us?

10:50 a.m.

Mr. King: Mr. Breithaupt, just to respond in a slightly different way, the emphasis in the white paper is bringing the registrar more into the running of the operation. I do not think that is right, because of the statutory obligations imposed on those who are supposed to run it.

I think maybe the response would be the other way around, that the officers of the company signing the annual statements should have that responsibility, much as signing a prospectus. You sign that it is a full, true and plain disclosure. It is a pretty serious matter if you sign that. You only have to think of Mr. Macdonald at A. E. Ames some years ago, with Kaiser, where the prospectus had not been read fully.

I think the auditor's certificate should perhaps be cosigned by the officers, the chief executive officer and the chief financial officer of the trust company.

You are quite right. The point is it is already expensive. I do not know whether you gentlemen realize what audit fees are for trust companies. It is incredible. As to my own involvement, we were talking several years ago of \$130,000. It is an expensive thing. We have to have a proper audit and so on and maybe a reference to the registrar: is he aware of anything that transpired over the fiscal year that gave his examiners concern?

To that extent, I think that is fine, but I think the onus has to come back on the officers of the company and they would be held liable for what they have signed. Does that respond to it?

Mr. Breithaupt: I was interested in another point or two. On page 8 you talk about regionality. Presumably that particularly favours a lesser capitalization requirement where certain areas not otherwise covered are getting the opportunity of coverage. You refer particularly to northern Ontario. In your observations, are trust facilities not sufficiently widely spread to take care of needs in the northern part of the province as you see it?

Mr. King: Perhaps I should have said other than metropolitan areas. Some years ago, I was involved in advising Hamilton Trust. It was ideally suited and performed admirably in the city of Hamilton.

I have scheduled the banks. They suck in the deposits in

Barrie, Collingwood, Kitchener and so forth and they all come down to head office here and are loaned out to Brazil. That does not help our regional communities.

What is a qualified mortgage? It has to have a basement, let us say. It may not be practical to have a basement--just using that as an example--and the covenants of the people involved would be very adequate. In other words, I think we should try and determine, or our regulations should be such as to try to suit the areas we are involved in.

What happens is you have the Northern Ontario Development Corp. or some of these other handout operations and you have to be on your backside before you get anything. You have a fellow who is running a legitimate business, but struggling. Unless he is broke, or has all the money in the world and therefore does not need any assistance--I think we should try to focus on where we can help people who are developing an adequate business, creating employment and so on.

Take seasonal hotels, for example. You go to a bank and it wants interest and principal every month. Maybe you just run interest for the off season and then your principal payments during the active season. In other words, tailor-make the investments to suit those things. If we can design things in this way to suit these regions, it would help develop other communities in Ontario.

Mr. Breithaupt: I think you make a good point with those suggestions, but I do not know that anything in the white paper would deny the opportunity of financial institutions to do exactly that now. I suppose that in a housing loan, there may be some Mortgage Insurance Co. of Canada problems if the house is not in a form where it has a basement or whatever, although that could also be dealt with.

Unless I misread you, while that area is certainly a good thing to observe and something with which we would all agree, I do not think it would be blocked in any way by the way business carries on now. They could deal with those matters through banks or trust companies in their normal business. Is that not so, Mr. Thompson?

Mr. Thompson: I think--

Hon. Mr. Elgie: Is it the suggestion that if a small northern community, not a metropolitan community, was not being well served, and had an individual or a group of individuals who wanted to form a local regional company, the capital base requirement should be different for them as long as they serve that region primarily? Is that what you are saying?

Mr. King: I think it is more a question of philosophy, Mr. Breithaupt. If we look at all the licences that have been granted, the criteria are much like those of the Ontario Highway Transport Board, convenience and necessity. A statement should be made by the applicants for a licence.

If they want to set up in Orillia, Huntsville, Parry Sound or wherever, the application should state that they want to serve a particular area of the community or want to run an ETA business within that community, for example. That is a definitive statement and the ministry should follow up and see how many loans they have in the area in future.

You are getting away from your original application. It is incredible to me that of all the companies that have been incorporated in the last 10 years, not one provides any ETA service. Why should people in Orillia have to come to Toronto to get ETA service?

Mr. Breithaupt: I presume part of the five-year plan that is required when a company is licensed looks at the kind of business they are going to be doing and prognosticates on the number of loans and the development, the number of branches and the kinds of services that are going to be provided. Does it not?

Mr. Thompson: What we hoped to give to the committee was a concept of a full-service trust company. If you want to say a full-service trust company is one that operates from coast to coast with a wide variety of services and branches, we think this would be that type of minimal corporation. I am not suggesting that is the test, but I think it is worthy of consideration that it might be.

I hope we have also clearly indicated in the white paper that special circumstances will be considered. I think we may take away from having such an arbitrary rule that says you must have this or you cannot offer that type of service. There are any number of very good examples of local trust companies that are well run, serve the community they are located in and even owned in, and provide a very effective competitive factor to the national companies. In fact, we have noted they may have required local changes in management, particularly on rates and such things.

Mr. Breithaupt: But a rule for \$10 million would prevent, or certainly hobble, the start of further local groups. Let us take Orillia, since that has been mentioned.

Mr. T. P. Reid: Or Thunder Bay or Atikokan.

Mr. Breithaupt: Whatever.

Hon. Mr. Elgie: I might say that is right in line with the recommendation on page 16, which reserves to the registrar the right to recommend approval of a lesser minimum capital in special circumstances.

Mr. Breithaupt: I think we have to underline that because of the peculiar circumstances that may well be required in the out-of-Metro scene, let us say.

Hon. Mr. Elgie: That is what that is designed for. We recognize that.

Mr. Chairman: Rainy River.

Mr. Breithaupt: The other end of Yonge Street.

11 a.m.

Mr. Thompson: I would like to make one other point. In the history of this the regional company quite often over a period of years becomes the national company. We wanted to clearly signify this as a target but just retain the right to tailor it for the individual case.

Mr. Breithaupt: I have just two more points. On the matter of the mutual funds Mr. King refers to, is there a response from Mr. Thompson on the theory of why mutual funds could not be handled as part of the fiduciary business?

Mr. Thompson: The basic reason is that there has been such little use, if any, made of that power. The type of offering of a mutual fund is something a trust company can really offer through its pool fund. There are quite detailed regulations about the operations of the pool fund.

The economy of operating the mutual fund under a declaration of trust within the operations of the company--and there are any number, such as the mortgage fund; every major company has this type of offering--operating it within a division without the necessity of setting up a separate corporate structure, has perhaps led to the fact that there has been very little utilization of it.

Our own thinking on the matter was that it was perhaps redundant to have it in there. They had the capacity, and the economical way of operating seemed to be within the pool trust fund concept; it was probably a redundant thing and in the process of examining it, we should eliminate it. As I say, we are open to suggestions on that.

That does not mean the company is being denied offering units of a particular fund or that type of mutual fund service. They have that, clearly.

Mr. Breithaupt: Mr. King, would you have a comment?

Mr. King: Mr. Thompson, what we are really trying to address ourselves to here is that we are getting away from the traditional concepts of a trust company in the estates, trusts and agencies area. When I hear you saying "Let us do away with it" and so on, it is not encouraging.

If it is the government's wish or if people do not want to operate ETA businesses or commit themselves to it, maybe they should go and get licensed simply as a bank. Are we committed or are we not committed to providing fiduciary services to the public? We need to encourage this sort of thing.

The concern I have with the white paper is an overall concern. I am sure previous witnesses here were all talking about how to compete with the banks, the football pools and stuff like that. I have not addressed that at all. You have heard enough about it.

There should be an encouragement in the white paper to serve the people in fiduciary businesses. There is a real need for it. I do not see why it should be concentrated in three major trust companies here. The little guy who does not have a heck of a lot of money still needs fiduciary services. All he can do is go to a local lawyer. In all these smaller communities, including, I regret to say, my own company, we have not promoted ETA services, but we will.

The point I am making is that we should make it easier or constructive to get in. For instance, rather than \$10 million, one should be happy with \$1 million and if the multiplier is restricted and you have a bonding arrangement or something like that, that is how we can help our smaller communities.

Mr. Breithaupt: If it is appropriate, the last point I want to raise, since this is an opportunity to do so, is to inquire as to progress in the involvement we had when Mr. King was last here, on his preferred shareholders' relationship and what the ministry was going to attempt to sort out.

I do not know whether it is necessarily appropriate, and I do not want to go into details that are tumultuous, but I do recall that last year you were going to be getting together to attempt some approach that would give some aid and comfort to the preferred shareholders of Crown Trust.

If you are able to mention what has been considered, done or committed to, if anything, then it might be appropriate for the members of the committee to hear that since that was one of the themes that was going to be followed through upon. Again, I suppose it fits in generally in the background of why we are here, although it does not relate peculiarly to the white paper.

Mr. Thompson: Finally, just as of last week, after about six months, we have what I hope is a base for discussions. We now have the final audit on Crown Trust; that is being sent out to everyone, and I trust they can get a better picture of the situation.

Mr. Cassidy: It is being sent to everyone?

Mr. Thompson: Yes. I have asked that it be mailed directly to the preferred shareholders.

Mr. Cassidy: Is it being given to this committee?

Mr. Thompson: I just had it on my desk this morning. I have one copy, and I will be glad to file it with the committee.

Mr. Cassidy: I think we should also ask for the most recent audited statements on Seaway and Greymac as well as other companies that were under provincial regulation.

Mr. Thompson: They are in the--

Mr. Breithaupt: I did not want to get into that particular thing. There may be a supplementary question, but my

interest was just to see what was happening in that relationship because, flowing from what we had talked about during the bill, it seemed appropriate to see what was developing. That is all I wanted to ask.

Mr. Thompson: When we were previously before the committee, I endeavoured to outline the problems with respect to dealing particularly with what have now become the soft assets and how we are endeavouring to secure that base. That is continuing on to some degree, but as I very much tried to do at that time, I emphasize that I do not want to hold out any false hope, if it turns out to be a false hope, at this time. We are really trying to concentrate on giving as much information as possible.

We spent some time discussing details. The only additional information I can give to the committee is with respect to the Daon building in Vancouver, which is now substantially completed. The report I had last week on it was that it does appear to be a very prestige type of office building in Vancouver, right in the core of the city. The rental is about one third secured at this time, but there is a very competitive rental market; so we are looking, I would think, at a program of at least a year before we can say that is rented and that we now have a concept of an income stream etc. that maybe we can--

Mr. Breithaupt: That seems a stronger asset than perhaps it appeared originally, which I am sure we are all glad to hear.

Mr. Thompson: Yes. We were facing the position of whether that was almost a write-off, but I think that is a very good and promising recovery now.

Mr. Breithaupt: Is there a commitment or in the fullness of time does Mr. King expect to be dealing further with the registrar?

Mr. Thompson: Yes. I would hope we would. We have had one preliminary meeting since, and I just gave Mr. King a copy of the audit this morning. On the basis of that, I would certainly welcome his review of it and his suggestions as to what might be done in this regard.

Mr. Breithaupt: Unless Mr. King has any response on that point, that completes my questions.

11:10 a.m.

Mr. Finley: Mr. Breithaupt, perhaps on behalf of Mr. King I might tell you that in fact we did meet with Mr. Thompson on December 6, at which time we did raise a possibility of a method of getting the preferred shareholders out of the Crown Trust fiasco, which did involve the Daon building in Vancouver.

We put that suggestion forward and we anticipated hearing whether our suggestion was of any merit. I am delighted to hear Mr. Thompson's comment this morning that perhaps there is some merit in it, but we have been waiting since December 6.

Hon. Mr. Elgie: With respect, I did write and indicate that the registrar did not feel there was merit in that particular proposal, but I indicated that we would certainly be prepared to discuss any other proposals you had. Mr. King wrote to me recently about meeting with him, and I am pleased to do that.

Mr. Breithaupt: What was the proposal? Was it a preference for that item with the preferred shareholders or something like that?

Hon. Mr. Elgie: Murray, what was the exact proposal?

Mr. Thompson: We discussed what was, at least to my mind, a very complex arrangement that might be involved in the ultimate disposition of that asset; but we are always concerned that we may be premature in it until we get some better security or a feeling of security with respect to that particular asset.

I just want to re-emphasize that we certainly feel we have a commitment to deal with the preferred shareholders to endeavour to work out whatever solution we can, but we just cannot hold out any false hopes at this time. I think everybody is concentrating on securing what we can to the best of our ability.

Mr. Crosbie: Mr. Chairman, one of the major problems we have in trying to deal with the proposals Mr. King has put forward so far is that in effect they require a form of preference for the preferred shareholders. Because of the general accountability of the registrar--and, for that matter, the ministry--in this area to all creditors, which includes the Canada Deposit Insurance Corp. now in its very substantial position as a creditor, it is not easy. In fact, we have not yet seen a proposal we could accept that would not be prejudicial to somebody else who has rights at least equal to those of the preferred shareholders.

Mr. Breithaupt: Indeed, at this point you now have an audit. Presumably this will lead to the opportunity for discussions, and I wish you well as you try to sort them out.

Mr. Chairman: Thank you, Mr. Breithaupt. I think we have discussed the point quite fully. We will move on to Mr. Cassidy.

Mr. Cassidy: Mr. Chairman, I appreciate the presentation material from Mr. King and the legal adviser.

I would like to ask you, Mr. King, about your comment that people have been poorly served by the trust industry with respect to fiduciary business. Can you elaborate on that? You also say there are a number of horror stories that circulate.

In theory, a substantial number of trust companies are capable of offering this business. Also in theory, I am told by my capitalist friends, someone should be able to come along with a relatively efficient and good ETA service and get the lion's share of the business. You are saying that in fact this is not the case; is that right?

Mr. King: No. I worked in the trust industry from 1958

to 1966, and when I consider the level of competence and professionalism in those days as compared to today, I think it is entirely different. I have just been involved in the removal of a trust company for incompetence, for example.

I think the level of professionalism has deteriorated. You have trust officers who are being appointed trust officers, handling clients' affairs, with two or three years' service. In my day it was 10 years. In the United States the trust services were operated as divisions of banks, and a trust officer was at the vice-presidential level. The stampede to get into the intermediary business has detracted from the companies developing their professionalism in what I consider should be their fundamental business.

In some ways it is regrettable they have gone as far as they have in the intermediary business, competing with the banks. At every meeting I have been to where there have been presentations by auditors and things like that, the trust company presidents get up and complain because the registrar will not let them have 25 times this and that and so forth. Not once have they mentioned what they are doing about improving their ETA business.

Frankly, they are quite competitive with the banks if you compare apples with apples. They talk about having write-off reserves and things like that. A trust company should do the same thing. If you adjust everything, it works out to about 19 times in both cases.

Mr. Cassidy: What is the major part of the ETA business in the province?

Mr. King: There were three companies licensed in Ontario out of the 20 before the seizure; that brings it down to about 17. That is pretty pathetic.

Mr. Cassidy: Only three are licensed?

Mr. King: That are doing ETA business; they are all licensed to do ETA. I believe they are, Mr. Thompson. Anybody who has a trust company licence--

Mr. Thompson: No, they are not. They have to get a special order in council to get a licence for personal estate business. I can quickly work that out. Mr. King is making a point that there are basically--he says three; there may be four or five in the business of actually marketing ETA accounts. Everybody wants to be in the trust business for the purpose of being a trustee of a registered retirement saving plan program. In most cases, that can be just taking the money in on trust and putting it on deposit, which to my way of thinking is not a real trust operation although there are trustee obligations there.

Mr. King: They operate what we call a guaranteed account. It is a low-overhead situation. Standard Trust, for example, has 600 or 700 agents out there. They operate a guaranteed account with two or three bodies back in the shop. The deposits come in and that is their operation. I do not see where

we have ever, through the government branch, encouraged these companies to say, "You have to start developing your ETA business to have that licence in that community." I do not see why people in Huntsville should have to come all the way to Toronto to get that service.

Mr. Cassidy: Is it the case that there are major regions of the province which do not have community access to ETA services?

Mr. King: Yes. In Barrie, say, you have Victoria and Grey Trust, but if someone has an estate he wants managed as a corporate executor, that estate is brought to Toronto to be managed. That is where we lose sight of the regionality of things.

Mr. Cassidy: Does V and G not offer those ETA services?

Mr. King: I cannot swear to that. I do not believe so. Generally speaking, that is fair enough. For Canada Trust, their estates go to London and perhaps Kitchener and Toronto. I am thinking of places like Owen Sound etc.

It is a form of education. If ETA business is done in these places, that in itself creates deposits and so on. People know people and investments can be made in those communities, whereas if you come to Toronto and you have an estate from Sudbury, and you decide that in your estate investment portfolio you want a mortgage, the Toronto office normally is not going to recommend a mortgage in Sudbury.

11:20 a.m.

Mr. Cassidy: You make a good point. What you are saying is--you just made a very good Marxist analysis, by the way.

Mr. King: I am sorry?

Mr. Cassidy: A Marxist analysis.

Mr. King: Marxist?

Mr. Breithaupt: Groucho or Chico?

Mr. Cassidy: The fact that the capital--

Mr. King: Mr. Cassidy, I feel very strongly we in this province should diversify our activities and encourage companies that have licences and the privilege of operating here. Somehow we have to encourage these companies by moral suasion to develop the communities in which they operate. I do feel strongly about this.

Mr. Cassidy: The present rule is a rather ridiculous rule that says there should be scrutiny of whether it is in the public interest to have the head office located in a particular area. You can put the head office in Fort Frances and have the name on the second storey of a building there and have all the operations in southwestern Ontario.

Mr. King: I agree.

Mr. Breithaupt: I thought the registrar said you cannot do that.

Mr. Cassidy: I believe the situation is that once you start to branch, you may be headquartered in Fort Frances, but you can proceed to branch in southern Ontario with no regard to where your head office is located. Is that correct?

Mr. Thompson: Under the existing arrangement, there is no control over that. We are proposing in the white paper that there be control over the number of branches.

Mr. Cassidy: What happens if management says, "In our wisdom, we think the second or 10th branch of this company should not be in northwestern Ontario but down in the Windsor area?"

Mr. Thompson: If local management is so good that it can compete in this area, should we prohibit it?

Mr. Crosbie: There is another aspect. If the head office were in Kenora and you opened a branch in Toronto, and the Kenora head office withered on the vine because of lack of business or whatever and the Toronto office prospered, do you close the trust company because its head office is not prospering?

Mr. Cassidy: We have certainly seen that. Was it Seaway that was located in Port Colborne? It was a microregional trust company before its sudden growth.

Mr. Crosbie: These are interesting questions and they are very appropriate ones to discuss.

In one of his proposals, Mr. King raised the very important issue of the degree to which the registrar should interfere in the operations of a company. Now we are talking about the registrar having some sort of power or moral suasion to compel the company to open up ETA services on a regional basis to develop the country. That flies in the face of the suggestion that you leave it up to the companies to decide what business they want to be in.

Mr. Breithaupt: That was more a capitalization requirement, was it not?

Mr. Crosbie: I thought he was saying he was concerned about the number of companies that had been licensed to carry on ETA business that do not do it or that are in the trust business and are not really providing trust services. Correct me if I am wrong, Mr. King. I thought the direction of your argument was that there should be some way of compelling more companies to provide ETA services in regional areas.

Mr. King: I object to the word "compel." The regulatory authority has functioned largely by way of suasion. Having been on the receiving end of the suasion, you respond pronto. In the last two years, we have had a different type of body there. I think you should be encouraged when you apply for a licence to start. There should be some definitive statement that you intend to develop, perhaps slowly, an ETA business. The company should be prepared to account for what attempts it has made.

Mr. Crosbie: A sort of gentleman's agreement on what is going to happen.

Mr. King: Yes, but it could be more than a gentlemen's agreement. If they have not developed anything after 10 years, they should be asked why not.

Mr. Crosbie: But if you do not have the regulatory power to compel it, if you are only doing it through suasion, what is the offence at the end of 10 years?

Mr. King: No, the thing is the registrar has the power to mitigate the multiplier. You have not really provided a full service here.

Mr. Crosbie: You are saying the registrar should have the power to reduce a multiplier because somebody did not comply with a regulation that is not there, because you are not going to have a regulation. The registrar asked you to do something, which he has no power to demand, and he punishes you because you do not do it.

Interjections.

Mr. Crosbie: That is the concern. I am not trying to be difficult, Mr. King, but I think the observations you are making show the difficulty the regulator faces in trying to do what are very worthwhile things, such as encouraging estates, trusts and agencies on a regional basis. I do not want us to be too loose in our thinking. I think we have to focus. If there is going to be a power to take away rights because you do not establish an ETA business, then presumably there must be some legal obligation to establish an ETA business. You have just said you do not want to have a power in the registrar to force an ETA business but you want to give him the power to punish if you do not.

Mr. King: I think the word "encourage" is what I would like to use.

Mr. Crosbie: I agree, but what do you do if they do not?

Mr. King: What about licensing companies to do ETA business, for example, companies restricted to ETA business? There may not be a huge demand to start off with. I know in my own firm I would be interested in a licence like that.

Mr. Crosbie: I agree with you because then it has been made mandatory. The legal condition is created that allows one to act if it is not complied with. But you started off by saying you did not want a legal condition, you wanted moral suasion.

Mr. King: Right.

Mr. Crosbie: That is my problem with your proposal.

Mr. King: The problem I am having is that we have the banks on the one hand, and the trust companies, which in the public's mind are also banks, on the other. Are we committed to

developing fiduciary services throughout this province or are we not?

Mr. Cassidy: Perhaps I can resume my questioning. Are you disturbed over what effectively has been the creation of a system of near banks under provincial regulation?

Mr. King: Yes.

Mr. Cassidy: Should we simply not be doing that and leave it in federal hands, for example?

Mr. King: Or have provincial banks. On the question of regionality--and I want to keep to that concept of "region" being Ontario region--I think we should have that. The Bank of British Columbia is doing a very credible job in its philosophical concept of why it started. The Commercial Bank in Edmonton is also doing that. Maybe it is time this type of thing started here.

The schedule A banks are sucking in. I have figures here of \$11.9 billion in capital, of which \$8.8 billion are in 90 days and over loans. That does not include the specifics, there may be some collateralized loans which are not included in these figures. The Royal Bank of Canada has \$1.2 billion in international loans of 90 days and over. I do not believe that includes the sovereign loans.

That is your deposit money going off to Brazil, Argentina, Romania and so forth. I do not think the purpose right now is to go into specifics of how these things are accomplished but I would like to raise the point because nowhere in the white paper does it address regionality, Mr. Cassidy.

Mr. Cassidy: Okay. On the ETA question, I think I heard you saying that on the one hand, the trust officers are basically wet behind the ears and may well be--

Mr. King: They are inexperienced.

Mr. Cassidy: --or alternatively, the action has been over on the financial intermediation and, therefore, anybody with any ability has gone over to that side because that is where--

Mr. King: The action is.

Mr. Cassidy: --the action is.

We have had a tremendous expansion in the number of lawyers in this province in the last 10 years. Has the ETA business been finding its way out of the hands of the trust companies into the hands of other people, who serve as personal financial advisers?

Mr. King: Mr. Cassidy, I manage pension funds. I would say the dramatic switch or movement since the mid-1960s has been that pension funds have gone from trust companies to investment counsel. I believe investment counsel now are handling close to \$100 billion.

Mr. Cassidy: And it is obviously paying for them. In

other words, what is happening is the trust companies for various reasons have been giving up market share in this ETA business.

Mr. King: Yes, because of lack of performance and that type of thing. It has been a dramatic shift elsewhere.

11:30 a.m.

Mr. Cassidy: One of the reasons for that has been precisely the fact that the management of trust companies tended to be pretty fusty and old-fashioned. I am sure that is one of the reasons they lost market share in this area.

Mr. King: The point is, if you examine the backgrounds of the presidents of most of these trust companies, very few of them have been involved in the fiduciary business.

Mr. Cassidy: I was going to say it may also be because the establishment is running out of stock. That is a Marxist comment as well. The establishment was simply no longer capable of really doing it particularly well.

I am glad Mr. Boudria appreciated that comment.

When Crown Trust Co. was taken over, the people there who were scions of the establishment did not know what the hell to do and have basically proven themselves to be incompetent to resist what Leonard Rosenberg did in six weeks to the traditions of an old established Canadian institution?

Is there some middle ground, some happy medium between that fusty type of management on the one hand and, on the other hand, this go-go, buccaneering entrepreneurialism that brought these companies to their knees?

Mr. King: I honestly do not think they knew how to deal with the matter. I think there was such an onslaught, they did not know how to respond.

I think it is quite clear, and you saw the documents I referred to, what went on and what happened. Crown Trust ran one of the finest ETA businesses in the land. But when the shareholders are taken over and are told to do certain things, presumably they do what the boss says. I think it was very difficult for middle management in those companies to respond.

Mr. Cassidy: I would like to go on.

Mr. Thompson: Mr. Cassidy, in response to your original point about the number of trust companies actually engaged in trust activities, of the over 50 companies registered, some 13 have over \$1 billion in assets under trust administration. Of that total, six companies have no assets under trust administration.

Mr. King: But I make my point, Mr. Thompson, that it is concentrated in a very (inaudible) way.

Mr. Thompson: Yes, it is.

Mr. Cassidy: Mr. King, under the doctrine of materiality or something like that, had the trust companies been under the supervision of the Ontario Securities Commission as the banks are, would they not, in fact, have been pushed to disclose the fact they had been put on a month-to-month licence?

Mr. King: To me, that is a material fact. In materiality you normally talk in terms of dollars; five per cent or so is the rule of thumb we use for materiality. If I were the chief executive officer, I think I would feel compelled to reveal the fact the licence has been restricted and that sort of thing.

Mr. Cassidy: Is it also possible they may not have been required to disclose where there were questionable valuations for mortgages and where, let us say, there could be questioning by--

Mr. King: I go back to the point that the chief executive officers of these companies have little or no experience being imbued with that sense of responsibility. Because of the fact they got a valuation from this fellow or that fellow, they may feel, "Well, that is tough, we have valuations."

I have just looked at Crown Trust's balance sheet, the audited statement which you do not have. I just got it from Mr. Thompson this morning. In working capital, they have \$108 million in cash and short-term notes and demand deposits of \$104 million surplus. Demands do not all come at once. That seems quite comfortable.

The company has \$37 million in shareholders' equity, plus almost \$8 million in deferred income taxes. If you multiply that out, it is not too far off the multiplier base.

Of course, the ministry's or the government's concern is the value of the underlying assets. That is very judgemental. What you are saying, of course, is whether or not this fellow here is a good mortgage valuator or Mr. Breithaupt is. It is very subjective.

Mr. Cassidy: We were faced not just with incompetent management but also with incompetent regulations, and one of the reasons, it seems to me, was the fact that the trust companies, despite their importance in the financial industry, because the closely held ones went under the Ontario Securities Commission, were therefore probably subject to less regulation than you are.

Mr. King: Oh, I am sure. For instance, you do not have to file prospectuses and things like that.

I see a move afoot that we should have monthly bulletins and things like that, because somewhere the judgement of the investor has to enter into it. Today in a public company you can buy a stock, go to an annual meeting, throw out management and things like that because you have disclosure and information. But the government took action on these companies, which the public and other shareholders knew nothing about.

Mr. Cassidy: Mr. King, you joined forces with my friend Jim Renwick and me when you complained about the proposed

overregulation that is in the white paper. It is my opinion that an explanation of the proposed overregulation is that the government has refused to confront the issue of limits on ownership of trust companies. But if you look at what has happened, or certainly at the summaries Terry Belford has come up with in his book, they basically say the entrepreneurs took hold of the trust companies and then got to the view that all the assets of the trust companies were basically personal assets.

Mr. King: Yes, and that is what I am saying. That sense of responsibility was nonexistent.

Mr. Cassidy: Would you see it as appropriate to have a tradeoff so that, in return for less onerous regulation, one sought to prevent this type of buccaneering behaviour by means of ownership limits on trust companies?

Mr. King: You really bring up a difficult point. Victoria and Grey is controlled by Mr. Jackman, and it is a respectable trust company. He also owns 40 per cent of National Trust. They are honest; that is the best I can say. Royal Trust is owned or controlled by Brascan. I operate accounts for all these trust companies and I do not see the control aspect as the problem, provided we have proper people who have experience as executives of these companies.

Mr. Cassidy: I have problems with that. Mr. MacIntosh of the bankers has problems with it, too. He points out that basically four families have control over \$80 billion worth of financial assets.

Mr. King: But you see, you can go to the other extreme. In a Canadian Imperial Bank of Commerce meeting, if you have ever been in that boardroom, there are 60 places and there are microphones there. You have the problem of perpetuating management that may in fact be incompetent. It took them an awful while to get rid of Neil McKinnon, for example.

So it is a question of the size of boards and of the people who are going to be responsible having directorships in these places. So many people are appointed to boards; it is a little stipend and a free lunch, and you push on.

I know I have not answered your question.

Mr. Cassidy: The argument Mr. Crosbie has made is that professional managers would be able to run roughshod if that is the case, because professional managers would have more influence than the owners of the shares. I think the contrary argument to this is the fact that professional managers may not show as much initiative as Mr. Rosenberg and his friends, but they would be more likely to work in a prudent fashion; and you have to balance prudence with some innovation in this industry. Clearly we had either too much prudence or too much innovation, and we need to find the balance.

11:40 a.m.

Mr. King: It is a danger of the white paper that we would go too far and stifle everything. These companies make, on average, about a 10 per cent return on their equity. For instance, Canada Trust--do not hang me exactly on these figures--made about 12 per cent return on its net worth; Royal Trust made about 15 per cent; National Trust made about nine per cent; Victoria and Grey made about 11 per cent. Interestingly enough, Trust Général du Canada in Montreal made about 17 per cent. I am leaving out 1981, which was a hybrid year.

It is not an awfully big return when you think how monopolies are awarded. Rates of return to Bell Canada are 14.8 per cent and 15 per cent. They are seeking to serve people in a monopoly position and they make a smaller return than do the people they seek to serve.

Mr. Cassidy: I would like to ask you a final question. You say on page 2 that in the past the industry has been more regulated and then you say on page 4, "Unfortunately, at this point in time, we do not know if there were problems in the administration of the Loan and Trust Corporations Act as it stood in December 20, 1982." There is a certain contradiction there.

Mr. King: There is, Mr. Cassidy. I am really referring to the time period of the inquiry. It really covers two years. I am saying before that I believe it was regulated and there was a close rapport with the registrar. When problems came up, they dealt with them immediately. I do not think there were such pressures. There were people who were well imbued in the industry and so forth and it did work well.

Mr. Cassidy: But I had the impression that if it worked well, it was because of--

Mr. King: The type of people who were there.

Mr. Cassidy: Essentially self-regulation.

Mr. King: Absolutely.

Mr. Cassidy: The registrar, as we have seen, was and is a toothless tiger up until the legislation at the end of 1982.

Mr. King: By the very people who were taking over these, real estate entrepreneurs who operated out of an apartment.

Mr. Cassidy: Do you not think that, among other things, the registrar has a responsibility to see that in the particular area for which he or she is responsible regulation keeps pace with what is happening in other comparable activities? In other words, as the Ontario Securities Commission, and I think this is a government thing too, was changing and certainly was rolling rapidly and as banking legislation was rolling--I keep on trying to say, well, who is responsible? These guys say nobody is responsible.

Mr. King: I would have to agree with you. The Securities Act was changed dramatically in 1978 and one of the major features of it is disclosure.

Mr. Cassidy: That is right. Do you see anything that would have impeded the registrar, faced with the events of the change in behaviour of principals in the trust companies, from simply saying: "Okay, I am going to start to use this disclosure," and using that as a stick, when there was clear and obvious behaviour designed basically to avoid the regulators.

Mr. King: You are quite right because the investor can deal with his investment as he sees the future unfolding. In Fidelity Trust, for example, licences were being shortened up and there was a report of capital deficiency and so on. I mean everybody knew there was a capital deficiency at Central Trust or that they were having problems and stuff like that. At the end of 1982, the stock can adjust accordingly or people can say--we should not deny the public the opportunity to withdraw their funds or to put their funds back in or to go from Joe Blow here to Joe Blow there.

Mr. Cassidy: Or withdraw down to the Canada Deposit Insurance Corp. limit.

Mr. King: Exactly. They should have had that opportunity to do that. Most trust companies, and of course banks, have a line of credit with CDIC. My own company has a substantial line of credit, but if there was any run, we could handle it. It would cost you a quarter of a per cent standby fee, but that is a type of insurance. That is an insurance premium. So you are covered that way.

As Fidelity's problems were being announced by the federal superintendent, the stock would drop accordingly and so forth. Those people are still there. Regrettably, they knew what was happening.

Mr. Cassidy: I think with hindsight it would have been nice if some of us in my party had got into the multiple-unit residential buildings stuff in terms of indicating just what a ripoff it was in taxes and also in terms of the unsavoury practices that were taking place.

Mr. King: That was absolutely shocking.

Mr. Cassidy: Again, I do not know whether the financial community or the regulatory community really blew a whistle on that. I am going to ask the Trust Companies Association of Canada about that this afternoon. What I remember is rather to the contrary. There was all kinds of breathless advice in the financial pages and so on as to what a great thing you could do.

Mr. King: The brokers pushed these things to beat the band. They phoned you and talked about the great tax saving you had, but they forget to tell you whether it was a good investment or not.

Mr. Cassidy: Once it was recognized that some of the companies were building up assets quickly with mortgages based on multiple-unit residential buildings, another aspect of disclosure is to do what the Ontario Labour Relations Board chairman does from time to time and what Mr. Knowles did as chairman of the Ontario Securities Commission, to talk not in specific but in general terms saying, "This is what is happening and maybe it is unhealthy."

Mr. King: For example, if the registrar, the minister or the cabinet authorizes additional share capital, surely the public can rely on the fact the share capital would not be issued if everything were comfortable. If you have a capital deficiency, the minister would be advised to sign this because it creates more capital to put the thing on side. This should be disclosed to those who are putting up the money.

Mr. Cassidy: When the increase in capital was granted to Seaway and so on through those cabinet orders, that was not secret but it was not disclosed. It was a bit like being put on the registry. Is that right?

Hon. Mr. Elgie: As I recall, orders in council are posted and they are public knowledge.

Mr. Cassidy: That is the archaic system where, if you know the right room, you can go and see them.

Hon. Mr. Elgie: That is what we are talking about, whether there should be a different system. That is the very issue Mr. King is raising.

Mr. Breithaupt: It is quite clearly, technically public--

Hon. Mr. Elgie: Sure it is, but we are talking about circulation.

Mr. Breithaupt: Whether it should be made more readily available is important.

Mr. Cassidy: When Bill Davis wants to make something public, he gets 1,000 people to come to the Ontario Science Centre and has a big song and dance about it.

Hon. Mr. Elgie: You could probably get five or 10 people to come to your session. I know a lot of people who would love to hear you talk.

Mr. Breithaupt: Give them a free lunch.

Hon. Mr. Elgie: With a free lunch, they would all come.

Mr. King: We are really talking about a monthly bulletin like the OSC. That is what I see happening.

Hon. Mr. Elgie: I will entertain your point and certainly the committee will look at it.

Mr. MacQuarrie: Mr. King, I was quite interested in noting that you are a director and member of the executive committee at Municipal Financial Corp., one of whose subsidiaries you indicated was Municipal Savings and Loan Corp. I was interested in the use of the word municipal. It caught my eye. In looking through the list of trust companies registered by Ontario, I see the Municipal Trust Co. Is that a related company?

Mr. King: Yes, it is. It is a wholly owned subsidiary of Municipal Savings and Loan.

Mr. MacQuarrie: Is it in the ETA business?

Mr. King: No. I said earlier I regret we have not promoted that, and we should. I am being self-critical there.

Mr. MacQuarrie: In terms of the type of business--

Mr. King: Excuse me. When you say in the ETA business, as Mr. Thompson said, we have self-administered RRSPs and things like that.

Mr. MacQuarrie: I was looking at the classical ETA. From your perspective as a member of the executive committee of that company and its subsidiaries, do you see advantages in some of the things put forward in the white paper?

Mr. King: The objectives are very commendable.

Mr. MacQuarrie: Generally, your only criticisms of the white paper are the ones you enumerated here?

11:50 a.m.

Mr. King: Yes. I have left off the banking situation because I know you are going to be well covered there. I do not particularly agree that the trust industry is a football field. If you take out the reserves and things like that, it is all about the same multiplier. It is a very competitive business and I can understand why they are complaining.

Mr. MacQuarrie: Just as a matter of personal curiosity about the name Municipal, does that mean you are involved in marketing municipal securities, debentures, that kind of thing?

Mr. King: No, it is not. We have a stated objective to serve the regions of Ontario. We have 15 branches and we are going to open two more this year. We are spread basically from Orangeville to Pembroke. I would like to assure you that the Pembroke office is prosperous.

Mr. MacQuarrie: It is good to know someone is looking at Pembroke, saying, "St. Isidore de Prescott might be next."

Mr. Boudria: You never know.

Mr. MacQuarrie: Those were really all the questions I had. You are appearing not only in your capacity as a financial consultant, but also as one knowledgeable in aspects of the trust industry?

Mr. King: Yes.

Mr. T. P. Reid: Most of my question have been answered. Some of us feel, to use your term, that the actions taken were quite draconian, and certainly one of my concerns is that none of the people involved has had an opportunity to have his side of the story spoken. It is interesting that none of them, I gather from the clerk and others, has indicated a desire to come before this committee to discuss them. I suppose that is partly on the advice of lawyers when we get back into the problem with all these matters before the court.

Mr. King: Could I just interrupt a moment? The point I am really making is that I believe we are putting the cart before the horse. You should have an independent hearing or a royal commission or whatever you call it before you do the white paper. I do not think it is right, personally, to go so far ahead with the white paper until you know what went wrong.

Mr. T. P. Reid: I tend to agree with you--

Mr. Renwick: (Inaudible)

Mr. T. P. Reid: --and Mr. Renwick agrees with me as well.

Mr. Breithaupt: I will agree with you too.

Mr. T. P. Reid: Just wait until you hear what I say.

Interjections.

Mr. T. P. Reid: The fact of the matter is that all the information available to us has come from within the government or the minister himself and there has not been any independent, outside body to investigate and report in a more objective fashion perhaps than we have had. We have gone through this in the Legislature and it obviously ain't a-going to happen, which always in itself raises questions in something as important as this why the government would not be prepared to have an independent look at it outside of the government. That in itself gives rise to the suspicion that perhaps there is something they do not want us or the public to know.

Having said that, however, the registrar indicated in his report he did not feel there was time to hold a hearing with the companies involved, that the sequence of events was running so fast that if the time for the hearing had been set up and everybody had been notified, we would have been well down the road and perhaps things would have been too late at that point.

However, you have indicated your concern about that. The registrar did have that authority. You have also indicated the requirement of holding a public hearing, if not before, at least after, is not in the proposed white paper. I would think that should be an obvious requirement. There should be some opportunity at some point, if not before, at least after, for a hearing to be held and for people to present their views.

There are a lot of people, preferred shareholders, the public at large, the Financial Post, interested in this, and all kinds of other people, I am sure, who would like to have that opportunity. I will ask my question directly to the minister. Why are you not making provision for a hearing to be held if not before--at least before if circumstances allow--but certainly after, if any such events transpire again?

Hon. Mr. Elgie: I think those are legitimate issues for us to discuss as we review the whole process proposed in the white paper.

You will recall the specific issue of whether the government acted appropriately has been before the courts and is still before the courts. That is a matter yet to be resolved in the courts. The parties have been to the Supreme Court of Canada on the issue.

I am not prepared to get into a discussion of whether we acted appropriately. Suffice it to say we obviously felt very strongly there had to be that exceptional power within the control of the executive council of a democratically elected government--not within the hands of the registrar, who does not have the authority granted under section 158a of the legislation passed on December 21, 1982, but rather in the hands of democratically elected representatives of the assembly.

In that process, there is a right to refer the matter by way of appeal back to the executive council which made that decision. This committee is perfectly free to discuss whether that is an appropriate procedure and whether the committee agrees there are circumstances when government feels it has to act expeditiously.

Mr. T. P. Reid: I have no quarrel with that. I do not know if you have misunderstood me or whether you are intentionally trying to fuzzify what I said.

To deal with your point about duly elected people and a democratic society, that all sounds very nice. I am sure nobody disagrees. The executive, the cabinet, has the power, and we all agree, apparently, that it should have the power. What we are complaining about is the problem that arises when your actions are not or may not be held accountable.

We had a hell of a lot of trouble, and I am still not satisfied, holding you accountable for what you did before the matter got into the courts. What Mr. King is saying and what I am saying is that at some point there should be provision for a hearing so that you people who made the decision can be held accountable and explain why you did what you did.

We go through the circle of an appeal back to the cabinet which made the decision in the first place. I really do not see how that is going to hold you accountable to anybody but yourselves. That is part of the problem.

Hon. Mr. Elgie: What you are really saying is that there should never be exceptional power in the hands of government to deal with this sort of situation. Is that so?

Mr. T. P. Reid: Having watched this government operate, yes, I would tend to agree with that.

Hon. Mr. Elgie: I would remind you of the support you gave that legislation.

Mr. T. P. Reid: I am not saying you should not have the power. I am saying there should be a public forum you come before as the minister responsible for exercising that power under cabinet authority, so you can say: "We did this for a, b, c, d and e reasons. Here is the evidence. Now, Mr. King, Mr. Reid, let us hear your side. I am here to be cross-examined and I am here to be accountable." I think that is essential.

Hon. Mr. Elgie: To get the affidavits filed by those who were involved in it, particularly Mr. Biddell when he was under cross-examination on those very matters, will take months. It is certainly an indication that there is a process whereby people who advise or make those decisions are subject to review.

Let me get back to the point I made before. This committee is here to review this whole issue and discuss it.

Mr. Finley: Mr. Chairman, perhaps I might respond. I think a question was addressed in this direction. We do not quarrel for one moment with the power that was granted by the legislation to the Lieutenant Governor in Council to grant the registrar authority to go in, seize and take control of the assets. That is quite appropriate legislation.

12 noon

Our complaint is with what happens afterwards. We have a situation now that has prevailed for some 14 to 16 months. We hear talk about a democratic society, but there are 800 people out there with \$19 million gone. What do they know today they did not know in December 1982? What do they know about their assets? What has happened to their assets?

Let me ask you a few questions. We have a very-well-perceived public perception of the fact that there are some scoundrels involved in this situation, and it has been well orchestrated by the media and by government internal reports. But in all honesty, what do we know today? Was any law broken? I heard reference here today--and I find it a rather strange place to find this reference made--that there are going to be criminal charges laid. We do not know of any--

Hon. Mr. Elgie: We did not say that.

Mr. Chairman: Could be.

Mr. Finley: What was the financial condition of these companies in December 1982? We finally got the answer today and this is February 1984.

What is their financial condition today? Were the steps that were taken necessary? Could other powers under the Loan and Trust Corporations Act have been utilized without depreciating the value of the assets of these innocent people? When, if ever, will the public, and in particular these preferred shareholders, be offered an explanation? No one has promised us anything.

When a constituent who happens to be a shareholder of Crown Trust comes to you and asks you when he will receive a report as to his investment and what the government of Ontario is doing with it, and if he will ever receive any repayment, what are you going to tell him?

As a lawyer, I cannot tell him anything, because there is absolutely no mechanism to call the government and the registrar to account to report on what they are doing.

I submit to you, when you hear all this talk about a democratic society, these people have had their assets expropriated and no one has given the time of day to tell them when they are going to get them back, if ever, or what is being done with them in the meantime. That is our complaint. There has been no review of the action taken.

We do not quarrel one bit with the power of the registrar to take control of these assets under the authority of the Lieutenant Governor in Council. Our complaint is that there is no provision for review.

Mr. T. P. Reid: I wish I had said that.

Mr. Crosbie: Mr. Chairman, to go back to the earlier point about the process, I would just bring to the committee's attention the comparable situation in the United States, the Federal Deposit Insurance Corp.

Where the comptroller of the currency in the United States reaches the conclusion, based on reports received from his staff, that a company is insolvent or otherwise unable to continue in business, he makes a unilateral, nonreviewable decision that takes the company away from the owners and places it in the hands of the Federal Deposit Insurance Corp. The United States courts have held that is not a violation of due process, that the security of the banking institutions of the United States demands that extraordinary power be available to the comptroller of the currency. You just might want to look at that process some time.

Mr. Breithaupt: Are there any further obligations, to explain, to appear or give details, that the comptroller of the currency has in those circumstances? Just to fill us in--

Mr. Crosbie: No. As I understand it, there have been a number of challenges, but unless you can demonstrate some actual bias on the part of the comptroller, that he was closing the bank to serve the interests of his brother or something, you cannot review his decision.

The review comes about in the next stage, where the Federal Deposit Insurance Corp. takes over the assets and sells them, transfers them to another company. That process provides some opportunity for review. The decision to take a company away from the owners is not reviewable.

Mr. Breithaupt: I do not think the decision in this instance is at question either, or the power to do that in the extreme and peculiar circumstance. What flows from that seems to have some balancing in the example you have used in the American scene. Of course, some of us have suggested that--I will not say day in court because that is not what I had in mind--review, hearing or explanation, is the stumbling block that bothers some of us.

Mr. MacQuarrie: If I could get back to the comments made about the plight of the 800-odd preferred shareholders, which was referred to earlier, I recall from the earlier deliberations of this committee when we were considering another piece of legislation that this plight was certainly recognized by the ministry and that the ministry was taking every possible step to harden up some of the soft assets in terms of realization. In fact, I can recall arrangements having been made for a meeting between Mr. King on behalf of those shareholders and the registrar, if my memory serves me correctly. Has a meeting been held?

Interjection: Yes.

Mr. MacQuarrie: I really think your earlier expressions are a little bit overstated.

Mr. Chairman: I do not want to prolong this. We can go around the table once again if you gentlemen wish, but I think Mr. Renwick has a few questions on something else and we should move on.

Mr. Renwick: I have been very patient. Just to pick up on the point Mr. MacQuarrie made, and following along the questioning and the exchanges that took place last November on the Central Trust bill and so on, I happen to have the transcript in front of me and I am not clear about whether or not the meeting that I thought was going to take place has taken place.

There was an exchange back and forth between Mr. King and Mr. Thompson at that time. Then, although I will not read into the record that Hansard of Thursday, November 24, it comes to a kind of conclusion, and Mr. King's final comment is, "That would be helpful." Then Mr. Breithaupt, in his usual succinct way, said--

Mr. Breithaupt: I am being quoted favourably. This is marvellous.

Mr. Renwick: Mr. Breithaupt says:

"Perhaps, Mr. Chairman, this would be an opportune time to complete certainly my questioning of Mr. King, whose appearance, I think, has been helpful.

"If there is the opportunity for the registrar and Mr. King to meet and at least explore the opportunities of dealing with the CDIC soon, then I think we will have accomplished a positive step to try to bring as much hope and prospects for these preferred shareholders as is realistically possible."

He makes some further comments, but, as usual, I have extracted the nub of his remarks. I wanted to clarify in the exchange this morning whether or not Mr. Breithaupt's summary of what I believe was a reflection of what was agreed about exploring the opportunities of dealing with CDIC soon has in fact taken place. Then I think we will have accomplished a positive step.

That is my first question. I have two or three other more general ones.

Mr. Crosbie: The short answer is that there were discussions with Mr. King concerning the proposal. You may recall that we were talking about--I forget. Was it a commercial settlement?

Interjection: It was reasonable.

Mr. Crosbie: That could be reasonably proposed. Now, we did have--

Mr. Breithaupt: With CDIC's acquiescence as to--

Interjections.

Mr. Crosbie: We reviewed the proposal and could not recommend it. We advised Mr. King of that and offered to meet with him again on any further proposals he might come up with. My understanding to date is that there has been no new proposal that we could consider and possibly recommend to CDIC.

Mr. Renwick: I do not want to labour this, but I reread the Hansard again this morning and my understanding was that there was going to be a meeting and that Mr. King and the registrar would talk with the chairman of CDIC.

12:10 p.m.

That was the substance of what I understood to be the case, because Mr. Thompson said, and I go back again to when he was referring to a previous conversation:

"Again, I have talked to the Canada Deposit Insurance Corp.--and will continue to talk to them--because we do get together quite frequently, as you can imagine. I have no objection to talking to them but I would not hold out any expectation because--"

Mr. King interjected, "Can we do that?"

Mr. Thompson said, "I certainly would explore it." Then it followed along to where Mr. Breithaupt quite properly summarized the situation. It was my understanding that while Mr. King would meet with Mr. Thompson, that would be preparatory to Mr. King and Mr. Thompson meeting with the chairman of CDIC. That was my understanding of it.

Mr. Crosbie: I think that is fair, but I think it was all contingent on us arriving at some sort of proposal we could put forward to CDIC. We failed on that--

Mr. Renwick: I know Mr. King had one particular proposal with respect to an exchange, but Mr. King has shown here this morning that he is an extremely flexible proponent of alternative propositions and a three-way conversation might have advanced some of the concerns that could be resolved. That was my understanding. I asked Mr. Breithaupt whether or not that meeting had taken place and he said that question had not been specifically asked, so I am glad to--

Mr. Finley: Mr. Chairman, would you like us to respond to that from our side?

Mr. Chairman: Sure.

Mr. Finley: We did meet with Mr. Thompson on December 6 and we did outline to him and Mr. Ainslie Shuve, who was in attendance, the specific proposal that we were putting forward on the question of the Daon building. We understood we would hear back within a week or so as to whether or not that particular proposal was worth while.

Events transpired requiring us to appear on behalf of the preferred shareholders before the Ontario Securities Commission. We were asked there how it was progressing. We said we had made a proposal and there was a possibility of some kind of a settlement being worked out. This was in the context of an application by the Toronto Stock Exchange to permit tax loss trading on preferred shares of Crown Trust.

As a result of the comments we made at that hearing, we received a letter from the minister admonishing us for making any suggestion that there might be a solution down the road and telling us that the--

Hon. Mr. Elgie: --just around the corner.

Interjection.

Mr. Finley: With more fuzzification I suppose. On my part of course, sir.

We were told that the Daon building proposal was unacceptable.

Hon. Mr. Elgie: As the registrar had indicated, yes.

Mr. Finley: The registrar had not indicated that to us. This was our first knowledge of it. They said that if we had any more ideas, please put them in writing and send them to the registrar.

In all honesty, our understanding was the same as your understanding and that of Mr. Breithaupt, and that was we were not going to play shots in the dark with these people. We did not think we would come up with another proposal and not hear why the first one was unacceptable, but be expected to produce another one. We thought we were going to work together.

We hope the commitment made here again today, renewed by the minister, to work with us, is perhaps one of a little more co-operative spirit, rather than suggesting we should continue shooting in the dark as to proposals and wait to hear whether or not they are acceptable. We would like to work with them.

This particular problem was heightened in the past week when, trying as we have over the last 12 months to work with the registrar, we were advised the tenants of the Cadillac Fairview buildings were going to have an opportunity to get involved in what happened to these assets. To date, we are still struggling to get that kind of an involvement.

That upset us a little more and frustrated us. We are in somewhat of a quandary. We are hopeful and we remain hopeful that the commitment renewed today will be a commitment to co-operate to find a solution and not to play this game of shooting in the dark.

Mr. Renwick: I do not want to prolong that aspect of my comments other than to say that when there are three parties engaged in something, it sure as hell does not hurt for them to all sit down together and kick the thing around. I thought that was the point we had reached on that particular day and I would like to see that done if that is possible. I do not know of any obstacle to it being done.

CDIC are deeply involved in this. If the preferred shareholders' representatives want to sit down with the chairman of CDIC and the registrar of loan and trust corporations about this problem, why do you not do it? Is there a problem?

Hon. Mr. Elgie: I guess the issue really is whether or not the registrar should feel that there is a commercially acceptable and viable proposal that he wanted to sit down and talk about. You are suggesting we were to be looked upon as an intermediary, simply to bring parties together to chat and not have any view on what was to be talked about and that, sir--

Mr. Renwick: No, I was not suggesting that.

Hon. Mr. Elgie: May I finish? I have trouble with that.

Mr. Renwick: I was not suggesting you were an intermediary. Do not make those suggestions.

Hon. Mr. Elgie: In any event, I have indicated I am

prepared to meet with Mr. King. The registrar said earlier he had serious concerns about whether it is possible to come up with a reasonable commercial proposal, and so do I. In spite of what counsel has said, I indicated very clearly to tenant groups when I met with them that we had fundamental legal obligations to creditors and to preferred shareholders. That is a primary obligation imposed by statute, and there should be no doubt about that, sir.

Mr. Renwick: All right. You have provoked me into my last quotation from the standing committee on Thursday, November 24. I was not speaking about the government being an intermediary at all. Mr. King outlined his proposal. He did not say that was the only proposal, but he outlined one proposal. He ended his remarks, "Can something like that be worked out?"

"Mr. Thompson: I can only say that we are not alone in this and we have got the Canada Deposit Insurance Corp. heavily committed. Anything along that line would naturally have to be discussed with them."

"Mr. King: Right." And then he goes on.

If I have drawn the wrong conclusion, then tell me so. My conclusion was that Mr. King and Mr. Thompson were going to get together and, as a result, there was going to be a meeting with the chairman of the CDIC and that was the way the world was going to unfold. If I am wrong, fine. It will not be the first time.

Hon. Mr. Elgie: We certainly will have a meeting with Mr. King and review these matters. If it is reasonable to do so, certainly I will communicate with the chairman and CDIC and see what is possible.

Mr. MacQuarrie: Mr. Chairman, from the point of view of the provision of information, if I understood what I heard earlier in the session today, Mr. Thompson provided Mr. King with an update of the last audited statement with respect to the Crown Trust assets--

Mr. King: It was still in violation of disclosure regulations by four quarters or five quarters, but I think this is hopeful. Rather than having a go-between, to accelerate things, if the three parties met together with CDIC, it would be very helpful. Surely, if there is a will, there has to be a way.

Mr. MacQuarrie: Like Mr. Renwick, I was under the impression a meeting was held. In fact, there was a meeting, but it did not go quite as far as you had indicated from your review of Hansard.

The minister has indicated there will be at least one more meeting, possibly--

Hon. Mr. Elgie: Sure. We will pursue this with them. I want to make sure we bring people together to have meaningful discussions about meaningful proposals.

Mr. Breithaupt: I do not think it is necessary, Mr. Chairman, that both the registrar and Mr. King's group have to agree on a proposal to take to CDIC. Perhaps that was the attitude the registrar had. It is useful if the three talk together for the general benefit of the cause, without feeling that, in this instance, the registrar and Mr. King and his group necessarily are advancing the same point. Their responsibilities are clearly quite different.

Hon. Mr. Elgie: We will certainly pursue that.

Mr. Renwick: Mr. Chairman, I want to be extremely brief. I want to emphasize what Mr. Reid and Mr. Finley said about the question of the hearing. I do not think we have to go very far and we do not have to blow it out of proportion.

There are examples in our own statute where there is a power in an officer of the government. The normal use of that power is to give notice of intention to cancel or suspend some right or privilege a citizen has. A hearing is held and a decision is made. That is the normal course of events.

12:20 p.m.

We also have in the statutes situations where the decision to suspend can take effect immediately but the hearing will then take place as early as can be. If it is an interim suspension to be followed by a final cancellation or something like that, it is a result of a hearing. I do not think there is any basic, fundamental question of disagreement on the matter.

The roadblock which Mr. King has so clearly pointed out, not in relation to the preferred shareholders but in his memorandum here, is that there has been no place, not where the officers of the government are on public display to be pilloried about their actions but for the orderly process of a hearing about the action the government took, which would mean that both sides would have an opportunity to exchange views in public.

I do not say you will not run into some roadblocks with respect to the courts, but in those kinds of circumstances, normally speaking, if there is a due process operation going on by the government, the courts will be very loath to interfere with that. Motions can be taken to the court and cleared away, and there is always some possibility of delay; but we are faced with the fact that there was no due process after the event.

I emphasize again, as has Mr. Reid, Mr. Finley and Mr. Breithaupt have said, that I have no problem with the government moving expeditiously to deal with their problem. Indeed, if properly done, there would be no objection to it.

The problem is, as there was no due process, everybody and his brother is in court and we will never have the answer to the very logical question: "Tell us what went wrong; tell us where the regulatory system failed and then we can amend it."

What we are faced with now, of course, is that it will be

years before the courts are finished with these issues. There will never be a public hearing in the sense that anybody will be at all interested in it.

I want to refer to Mr. Justice Campbell Grant's report about the Arnprior dam, submitted to the Premier after he retired from the bench. The Premier said: "I want to share this report with the members of the assembly at the earliest possible moment." That was just before the 1975 election. I have a letter on my desk now saying it may be that the final disposition of the dredging case will be dealt with this spring. The Premier is going to share with us, nine to 10 years later, this report that he is most anxious that we have.

That is exactly the situation we are in. It is in the court; there will no public hearing. In the future, if the statute provides not only for expeditious action by the registrar, if that is required, but also for a hearing, then we will not have this problem of the tremendous delay that is involved in the court proposition.

That is what we have been trying to say to the government. We have not been trying to second-guess the government on the urgency of the action. We have not been engaged in constitutional questions of whether in the United States it is due process or not.

All we are saying is to take what is in some of our statutes now and provide for that kind of power. If the intervention of the government has to be immediate and has to take effect immediately, as we have done in other cases, then make the provision in the statute for it. That, to my mind, is what has been said. I do not want to keep at it, because the points have been made.

Again, I am grateful to Mr. King for saying, "In my opinion, citizens of this province are poorly served by the trust industry with respect to fiduciary business." If I can do anything to resurrect chapter IX of the select committee report with respect to that very issue and the request that something be done about it, I will; it is essential to the work we are trying to do.

Other than to say that I could perhaps find, if I were retained at a good fee to do it, something in Mr. King's submission that I could disagree with in a minor way, I would have extreme difficulty about the points he has made.

It is a perfect example of the mishmash we are in, being an overreaction by government to a situation about which the public is in the dark. I can understand if you people who have been involved with your noses in this business for so long think, "Henny Penny, the sky is falling," and you move in with this elaborate process. This committee has an obligation to tone the thing down and restore a little balance to these white paper proposals.

Mr. Boudria: I will try to be brief. Returning to some of the original things I was asking when I had to leave, I want to go back to the public convenience and necessity theme we were

discussing. For instance, it may be a distinct public necessity to open a trust company in St. Isidore de Prescott. I probably have the only riding in this province that does not have any trust company office of any kind. There is no such thing operating any place in my riding. I am sure there are not many places in the province where that situation--

Mr. King: The Parry Sound district.

Mr. Boudria: Most of Parry Sound? In any case, all of Prescott-Russell is in that situation.

It could probably be easily demonstrated that there is a need for a small trust company to operate in Hawkesbury, for instance, or some other place. The problem, which you alluded to earlier, is that once you open in Hawkesbury, you open a branch operation on Bay Street in Toronto, and the public necessity and convenience is far less there than it may be in the place I represent, which does not happen to have any of those services right now.

You were saying the requirements that are being proposed in the white paper will make it more difficult for a new trust company to start operating with less than the requirements in there. Do you think the verbiage should be changed in the white paper or in subsequent legislation in order not to say, "We want a minimum \$10 million, but you may apply for an exemption so it is a bit less"? Should it rather be the reverse, saying, "In small communities we will encourage the establishment of trust companies with less than the amount required in the white paper"?

When the whole tone is one of asking for an exception, are you really not making life more difficult and decreasing the chances of getting applicants? Would that be a fair assumption?

Mr. King: It is a fair assumption. You see \$10 million in the legislation. You can negotiate down to \$9.5 million, but it is really not pertinent. For example, there was an insurance company established in Sudbury with \$1 million in capital. It is doing quite well and is providing a significant service to tourism and so on there. It is tailor-made to the facilities it plans to offer.

It should be the other way around. The government may prefer \$10 million, but the language should be such that there is encouragement to people to provide specific services to specific communities, racial groups or what have you to serve the people of this province.

Obviously I have not thought it through, but I do not think it should be black and white the way the deputy minister is suggesting. There are ways we can develop it so it is attractive to people. If the legislation reads that you have to have \$10 million, that is going to be very restrictive for many of our smaller communities. The concept is, if it is not \$10 million, it is \$9 million or \$9.5 million. Can it be \$2 million or \$1 million?

Mr. Boudria: In other words, the whole thrust of the way

it is written actually should be reversed specifically to encourage the establishment of smaller trust companies in smaller rural areas where the public necessity is obviously there.

12:30 p.m.

Mr. King: You may be able to cover it by published regulations, so that sort of thing can be accommodated.

Mr. Breithaupt: Or have two classes.

Mr. Boudria: Just one more question.

Mr. King: Mr. Boudria, the other thing is that you can prohibit branches. That is quite common in the United States.

Mr. Boudria: I understand that under the bill, you now have the power to do that in any case.

Mr. King: For example, it is how you define a branch. You may have an office to bring capital from Metropolitan Toronto to--

Mr. Boudria: To Hawkesbury.

Mr. King: Yes, to Hawkesbury. So there is no reason why you cannot. You can define what a branch is by regulations.

Mr. Boudria: Back on page 2, you refer to the trust companies becoming banks. It is interesting to note the group that will make its presentation this afternoon, the Trust Companies Association of Canada, says almost the reverse in its submission. This association says banking institutions have gotten into all kinds of areas, such as consumer loans and things like that, which is making things rough for trust companies.

The trust companies association is saying the reverse of what you are saying. I just thought it was an interesting thing you might want to be aware of, in case you are not here this afternoon to listen to the brief. I wonder whether you have any reaction.

Mr. King: This group objects to the banks getting into it. Well, I can see that. I am not totally in agreement with the Trust Companies Association of Canada.

Mr. Boudria: That is all I wanted to know. Thank you very much.

Mr. Chairman: Thank you, Mr. Boudria. To Mr. Finley and certainly to Mr. King, thank you on behalf of the committee for being with us this morning.

Mr. King: Thank you for having us.

The committee recessed at 12:32 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

THURSDAY, FEBRUARY 16, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Trust Companies Association of Canada:

Colhoun, J. L. A., Past Chairman
Marchment, A. R., Chairman
Potter, W. W., President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 16, 1984

The committee resumed at 2:03 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

TRUST COMPANIES ASSOCIATION OF CANADA

Mr. Chairman: The gentlemen before us are with the Trust Companies Association of Canada; William W. Potter, president, Alan R. Marchment, chairman, and J. L. A. Colhoun, immediate past chairman. Would you please identify yourselves, gentlemen, and proceed with your brief.

Mr. Marchment: Thank you, Mr. Chairman. Mr. Potter is on my right and Mr. Colhoun is on my left.

We would like to make a brief opening statement, after which we shall be pleased to answer any questions the committee may have for us stemming from our comments or from the recommendations we have made in our submission relating to the regulation of loan and trust companies in Ontario.

In our submission we refer not only to the proposals in the white paper, but also to some of the recommendations made by the select committee on company law in 1975. We think it is vital that many of these recommendations be taken into consideration also.

The Crown-Greymac-Seaway situation was very serious indeed, and in our view merited the prompt action taken by both the provincial and federal governments. We believe these circumstances to be unusual and not representative of the industry as a whole. Because of this, we hope you do not make any overall regulatory framework unduly restrictive so as to limit the capacity of the industry itself to grow and better serve the financial interests of the people of Ontario.

We believe the philosophy of the white paper is well balanced and recognizes the role and importance of the trust industry in a highly competitive market. We think the critical questions this committee has to address are ownership and competition. With respect to the latter, it has always been our understanding that both the federal white paper and the Ontario proposals in its white paper were designed to encourage competition. Neither wishes to see all financial powers reside solely in the chartered banks.

On the question of ownership, the Canadian Bankers Association has taken an opposite point of view. In contrast, Mr. Renwick also expressed his concern last week which appeared to support our position, observing that entrenched management could

be just as detrimental to the conduct of a company as a dominant shareholder. He went on further to state his concern about mutual life companies and their lack of accountability of management to anyone in particular.

The white paper proposes a framework we believe contains sufficient safeguards to prevent a major shareholder from exercising a control position to the detriment of the trust company's depositors, clients, customers and other shareholders.

Major shareholders have provided financial support that is extremely important to the financial vitality and growth of trust companies. Limitations on participation by major shareholders would have an adverse effect, not only on the growth of many trust companies, but would also have an adverse impact on the market value of shares for both majority and minority shareholders.

The trust industry does not believe the difficulties encountered in the Crown-Greymac-Seaway events relate so much to who was the dominant shareholder but, as the Morrison report points out, to the conduct of the owners and directors, and to their direct involvement in management decisions. We believe the government proposal in the white paper is correct in taking a balanced and flexible approach on the ownership question. We believe a significant investor in a trust company should hold management accountable for the operations of the trust company while it provides the checks and balances to management actions.

Another critical area for us is commercial lending. Many of our companies have been making commercial loans, primarily corporate term loans, to the extent existing legislation permits. Over these years, they have acquired considerable expertise demonstrated by our loan loss ratios, which have been much lower than those of the chartered banks.

It is well to remember that trust companies are domestic in nature. Their deposits are raised in Canada and their loans are made in the domestic market. A minimum of at least 15 per cent of total assets in commercial lending is vital to our industry. We would like to stress this in the strongest possible terms.

We have pointed out in our submission that mortgage loans have been primarily our main product for many years. Studies by Canada Mortgage and Housing Corp. predict, for demographic and other reasons, a decline in residential mortgage demand in Canada until at least the end of this century. At the same time, chartered banks have been competing vigorously for the reduced amount of residential mortgage business available. With their enormous size and some 7,000 branches from coast to coast, they have virtually taken over this market traditionally serviced by trust companies.

Today the chartered banks account for about half the volume of new and renewed mortgage loans. We believe consumer acceptance in the marketplace of our products and services has proved we serve the public well, but we must have the flexibility to diversify our assets to be strong and viable and to continue in this role.

I will not go into detail on conflict of interest since this has been covered extensively in our submission. Parts II and III of our submission deal with a variety of specific government proposals, recommendations by the select committee on company law and our own. We will be pleased to answer any questions the committee may have for us.

2:10 p.m.

Mr. Chairman: Thank you, Mr. Marchment. I presume the Mr. Renwick you are talking about in your brief is Mr. J. Renwick, the member for Riverdale?

Mr. Marchment: Yes, sir.

Mr. Breithaupt: Why don't we give him the first chance then?

Mr. Chairman: I think we should.

Mr. Renwick: I am quite happy to wait, thank you. I always try to be on the side of the angels.

Interjection: I like that approach.

Hon. Mr. Elgie: I think we are all part of the same angelic group. Have you noticed any irritability in anybody on this committee?

Mr. J. A. Taylor: Not a bit, but Mr. Renwick has indicated how critical these issues are to his constituents.

Mr. Chairman: Are there any questions for the witnesses?

Mr. Renwick: We had an interesting submission yesterday from the Institute of Chartered Accountants of Ontario, accepting that its representatives were speaking to us as members of a public body and not as a self-serving interest group. They said in substance, in the events surrounding Seaway, Greymac and Crown, as far as they could tell from their point of view there were no errors or omissions in the work of the chartered accountants involved in the reporting work for the trust companies concerned.

They also pointed out very clearly the problem with respect to internal controls and management controls, which was touched upon in your letter. How do we deal with that question? The white paper seems to indicate we should deal with it through a number of methods, but mainly by a substantial degree of regulation. Is it going to be possible, as an alternative, to devise in co-operation with the chartered accountants and the Trust Companies Association of Canada standards of internal controls and management controls that will go at least a substantial way to eliminating the kind of problem that occurred?

Mr. Marchment: I might answer that in a personal way. In my own company, Guaranty Trust, our external auditors semi-annually address themselves to internal control procedures and checks and balances. They report in detail on their analysis

of the systems we have in place, systems they may feel should be put in place, and the steps we as management have taken to implement our recommendations and any comments that management may make in opposition to any of those suggestions.

They usually present quite a detailed report, in writing, before the audit committee, which is made up of independent members--no management people sit on it--and at the end of the meetings they meet privately with the audit committee to discuss with it whatever points they wish to raise privately with it.

We have found it to be a very effective means of satisfying the board that we are conducting ourselves properly, and it is a great benefit to management itself, to see what weaknesses exist in the eyes of an outsider, so that we can address those problems ourselves and ensure that the functioning of a company is as proficient as possible.

Mr. Renwick: The institute has been able to develop accounting procedures for loan and trust companies headed towards the goal of a relative degree of standardization of process in the auditing accounting function for trust companies. Is it not reasonable to assume there is sufficient similarity among the various companies and in the various aspects of an individual company's work that would lend some opportunity for standardizing or normalizing or providing significant guidance to the trust companies on the whole question of their internal controls and management controls?

Mr. Marchmont: I do not know whether one set of guidelines would apply to everyone, but certainly the procedures they follow and the methods they follow would apply to any corporation, not only trust companies. The difference would only be as it relates to a specific entity.

Mr. Renwick: Perhaps I could be specific. I am not trying to straitjacket a business in standard rules that everybody must comply with, but it would seem to me that for a committee that was dealing with the question of mortgage loans, surely that lends itself to what would be considered good managerial practice and good internal controls with respect to the processing of an application for a mortgage loan through to its completion, including all the questions of appraisal, evaluation and judgemental questions and so on.

In that way, when the process is completed you would have the sense that the mortgage committee had looked at each of the loans it was making in a way that met the requirements of the act and the judgemental questions of good business. Surely that is the kind of possibility.

It is almost trite to say that whenever there is a financial collapse in the province, the phrase "mismatching of funds" comes back into parlance as though that is something that has just been discovered. It is not really a very difficult principle that you have to match your obligations with your capacity to meet those obligations.

When you are dealing in cash, is it not possible to say there are certain tests, many of which are in the statute and in the regulations, which are designed to confirm on a daily basis that you are within the matching requirement that is necessary to conduct your business successfully? It may not be a daily test, it may be weekly or whatever the period is, but there is always that question that has a positive answer, that yes, the company is in compliance with its obligations. Is that not possible?

Mr. Marchment: I would agree with the first part of your statement. The matching of funds in trust companies is a more complex problem. We all believe in matching, but matching has only really become highlighted for most people in the financial industry since inflation became a significant factor. It certainly was highlighted when interest rates skyrocketed in a very short period of time.

Normally in trust companies a major portion of our flows of deposits is in the first half of the year. Our major outflows are in the second half of the year. Therefore, it is not that easy to match month by month, although we all endeavour to do so. Current literature in the financial industry, I am talking of banking primarily, has given more emphasis recently to using techniques to offset the loss of spread caused by mismatching through the use of financial futures and other means. I would think in our industry there will be more attention given progressively to how to protect your profit when you do not have complete control over matching funds on a daily or monthly basis.

2:20 p.m.

Mr. Renwick: I do not want to pursue it. It seems to me if it is in any way possible to satisfy the government that it does not have to go the more elaborate regulatory route, I think the association and the institute and whoever else are advisers to the trust companies have to answer that kind of a problem.

I find it extremely difficult to think there is suddenly a watertight compartment between the responsibilities of the auditors to a company in these areas and then something called internal controls and managerial controls. They are not necessarily all accounting controls. There are various controls that your association probably has an opportunity to deal with in a way which would be helpful to this committee and to the government, when it gets to the point of preparing the legislation which probably will flow from this white paper report during the next Ontario parliament. There is obviously time. These things are not going to be done overnight.

I have been critical of the trust companies because I had a substantial part to do in raising the issues of the estates, trusts and agencies business, in the way in which small estates do not have access to trust companies with respect to their administration. By small estates, I mean something less than wealthy people's estates. We have the indication that, in a sense, the financial intermediary business is what is attractive to the business and not the estate, trust and agency business. Over the

years it has not been possible to maintain the access to trust companies for the ordinary citizen whose assets on death probably amount to more than the person believes he has in a lifetime in relation to group insurance and ownership of real estate and the inflationary factor, pensions and all of these additional assets. It comes to a fairly substantial amount.

There are a number of estates that are not efficiently administered from the point of view of being able somehow to put the assets together to maximize the income, let us say, the beneficiaries might be entitled to receive over time. It is all set out in chapter 9 of the select committee's report. I would appreciate hearing any comments you may have to make about that area of the business, including the vexed question that it is subsidized by the financial intermediary business.

Mr. Marchment: I will make a general comment and then call on Mr. Colhoun to speak to the subject matter.

The estate, trust and agency business of trust companies is twice the size of its intermediary business. It is very important to us. It goes well beyond the personal estate business because it encompasses things like pension fund administration, stock transfer business and all of those things. It is not only significant in size in total assets, being double that of the intermediary assets, but it is very significant to us from a profit point of view.

Our industry, which has always been concerned about handling small estates and their unprofitability, simply because they are so small, has generally taken the point of view that this is our franchise and therefore we should serve it. We do take on all estates regardless of size, and I would have no reason to believe we would not service those as well as major estates. I will ask Mr. Colhoun to comment further.

Mr. Mitchell: That would seem to contradict a statement that was made this morning. There was a gentleman who indicated to this committee that--

Interjection.

Mr. Mitchell: Yes. It is interesting.

Mr. Colhoun: I speak for a major trust company, National Trust, in the sense of estate administrations in Ontario. We have tried to organize ourselves in a variety of ways, in particular to be able to deal with the small estate. We have tried to streamline small estates to give them the type of service because they are generally a straight payout. Very seldom do we have these things going into trusts for children and things of that nature.

One thing we have been trying to do is get changes in procedures. Before the select committee, we talked about co-mingling and things like that. We have a common trust fund. A number of things of that nature are very important to us. On the other side of the coin, there was a period during the 1970s, and I

have forgotten the specific dates, when estates with a value of, say, \$100,000 dropped five years later to about \$70,000, after the market break.

During that period, all of our costs were going up and up and up, but we could not get any increase in fees from the surrogate court. So there we were, five years later, doing the same type of work. While doing that work was costing us a great deal more, we were getting a lower remuneration. That has been one of our problems. When we make any effort to talk about compensation, the surrogate judges, properly so, regard this as a special prerogative. It is their discretion, and it is very difficult indeed.

I think what we particularly need in the legislation, and we have dealt with it in part in the areas of co-mingling and dealing with small balances and things like that, is some legislative support for streamlining procedures so that we can cut down the cost of estate administration.

In our own company we take estates I have seen for \$17,000 or \$25,000 in our agenda and report them monthly to the board. We have been trying to have a division of our trust department that will give this type of small estate special attention. We try not to put it through all the extensive computer procedure; we try to have different procedures. That is the type of thing we would like some legislative support on.

Mr. Renwick: Again, I draw to the attention of the minister that we tried to itemize at some considerable length the kind of study we indicated was necessary in this area. Whether it produced a worthwhile result or not, I have no idea, but I certainly think it is important to implement that particular select committee recommendation.

Mr. Potter: Mr. Chairman, as Mr. Colhoun pointed out, we did have an informal meeting with the surrogate court judges. We also sent a brief to the Ontario Law Reform Commission in this area.

To get back to Mr. Marchment's remarks on the figures, I guess it stemmed from your submission this morning, as far as the number is concerned, and this has taken some 40-odd trust companies in Ontario. The guaranteed funds deposits and so forth are \$47 billion. But when you look at the estates, trusts and agencies side, it is \$87 billion. Mr. Marchment mentions nearly two to one. These figures are 1982 figures, December 31, 1982.

Mr. Renwick: How much of that is pension money?

Mr. Potter: I have not been able to break it down in a short time. That is just a total of ETA, \$87 billion versus the other side of \$47 billion.

Mr. T. P. Reid: Of the \$87 billion, is part of that going to be the pensions?

Mr. Potter: I think it would cover all those areas. It would be very difficult right now. You would have to have an individual breakdown from everything and total it.

Mr. Renwick: This is my last question, if I may, and the deputy minister is looking into it. I raised the question the other day of whether or not it is time to consider, rather than regulation, the concept of public interest directors on companies of such importance in the province. Have you given any thought or consideration to that kind of approach to the problems we have been faced with?

2:30 p.m.

Mr. Marchment: I guess I am supposed to respond. No, we have not given any thought to it. I would think most of us, if not all of us, are quite happy with the input we do have from our own boards and really do not see the necessity of the introduction of new individuals. We do not see it as adding any more positive contribution than we already receive from our present board members.

Mr. Renwick: We do not know these things as yet, but there obviously did appear to be a serious problem in the transition of ownership of Crown Trust which developed over a period of time and finally culminated in the rapid apparent deterioration of that company in the three months in the fall of 1982.

How are we going to answer that question? Are we going to have to resort to government regulation to deal with that? The board of Crown Trust changed quite considerably from the time of McDougald's death, through Conrad Black, through Asper, through the problems that have gone on with that company.

How does one deal with that question? They had a board of directors at the time of the difficulty in that company. How do we get away from the fact we are going to have to consider some kind of public representation on a board of a trust company?

Mr. Marchment: I do not think the trust companies should be singled out. I think the problem really is the responsibility of directors and the liabilities they assume for being a director of a corporation. It could happen not only in trust companies, but in any other kind of company. If a director knows that, if he fails in whatever his perceived duties are he will have personal liability, I think he would take a different kind of interest.

Mr. Renwick: I am not trying to quarrel. I could make a distinction in my mind as to directorships in trust companies and the standard of care which is required, which is of a higher nature in my judgement simply because of the traditional statutory provisions that every trust company receiving deposits in the manner authorized shall be deemed to hold the deposits as trustee for the depositors and to guarantee repayment thereof.

You can say that is true of every business corporation, but it is not. They are impressed with a trust and the trust concept is one which--again, I use my terms advisedly--was apparently breached in the case of some of the companies which precipitated the problems we are faced with.

It is the same with guaranteed investment certificates. Very special language is used. If you are going to have the full benefit of that very special concept, you have to accept the full obligation of the trust concept. It has got to the point in Ontario that we cannot always treat the difficulties that trust companies have run into intermittently since the 1960s as if they are the odd ball out.

We have to deal up front with the question of the fiduciary responsibility of the directors of trust companies with respect to deposits and guaranteed investment certificates.

Mr. Colhoun: I submit to you that is essentially the responsibility of the board. If you put people on the board who are representatives of the public, you have to be very careful the board does not get into management functions.

If you make that distinction, I think it is a very important distinction. Coming to the board then, whether they have these public representatives or not, would be the information that would basically flow to the board today. I submit that at that point as directors on the board I do not see how people appointed for the public interest would be any more responsible than directors appointed in the regular way because they would be keenly aware of their duties.

You have to be very careful that you do not get the public directors involved in the management process because there is no way these companies can be run by boards of directors.

Mr. Renwick: No, I am not suggesting that for a moment. I am suggesting a public director as a member of the board, exercising the functions of board members for a trust in a trust company. I am not suggesting they become involved in management. I think they would have public responsibilities where they would be in a sense the protectors of the public in the ultimate sense rather than a degree of regulation and control by the registrar.

Mr. Colhoun: Who would nominate these people?

Mr. Renwick: Well, as I say, I assume it would be the Lieutenant Governor in Council.

Mr. Colhoun: On the recommendation of the minister?

Mr. Renwick: I cannot conceive for a moment that the government would not take into account recommendations that were made by the industry as persons who could serve that particular role.

Mr. Colhoun: I must say within our own company we would not feel the necessity. I think our board acts in such a manner that that would be a superfluous need.

Mr. Renwick: Okay. I do not need to pursue it further right now. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Renwick. Are there any further questions to the witnesses? Mr. Cassidy.

Mr. Cassidy: I have some questions. I was waiting in case other members wanted to go ahead. Mr. Marchmont, reading your brief, and I think you know the concerns we have with what has been happening within the industry, can I just ask a bit about the association?

How many members are there in your association?

Mr. Potter: There are 43 members.

Mr. Cassidy: Therefore, not all of the trust companies in the country are members. Is that right? What proportion of the assets of the industry are--

Mr. Potter: They probably represent over 98 per cent of the trust industry members in Canada.

Mr. Cassidy: So it is the little ones you miss. Is that right?

Mr. Potter: They are usually companies with perhaps one branch, something like that. In fact, even on the branch network, the companies within the association represent about 95 per cent of all the trust company branches in Canada.

Mr. Cassidy: Was Seaway-Greymac a member of the association?

Mr. Potter: They had joined just shortly before.

Mr. Cassidy: Are there any standards which the association requires in order to be or to maintain a membership in the association?

Mr. Potter: Not basically. The Canadian Bankers' Association is an association that is formed by federal legislation. The Trust Companies Association of Canada and many other associations are really volunteer associations. In other words, you can belong but you do not have to if you are a trust company. Many trade associations are like this.

We have articles in the association, but there is no specific standard except to conduct the business to the public good and maintain high standards. There is more or less what you could call a code of ethics.

Mr. Cassidy: Do you have a code of ethics?

Mr. Potter: You could say that in a way. We have spelled it out. You can call it a code of ethics, but in essence it is not really a code of ethics. We have certain standards.

Mr. Cassidy: Is it your practice then--

Mr. Potter: But, again, we do not have self-policing, so if a company does something, as we have had in the last year, we can use moral suasion to a degree, similarly to what the registrar does. I do not think he had certain controls. He could use moral suasion. We can within the industry because they are meeting with members of the executive, the officers, chairmen and so forth, but there is no specific way we can expel them from the association. I think that is probably what you are getting at.

Mr. Cassidy: You may not be able to expel them, but you can keep them out if they want to come in. Was there any review of Seaway-Greymac when they came in in terms of whether or not they would appear to be complying with the code of ethics?

Mr. Potter: At the time they made their application and so forth, they furnished a financial statement and a background on their net worth and so forth. There is no cut-and-dried method to say, "I am sorry, you are below a certain level or you have done this and we cannot accept you." We do not have that authority in our association.

Mr. Cassidy: Of your 43 members, what proportion are widely held and what proportions are narrowly held within the definitions of the Ontario Securities Commission?

Mr. Potter: Within the entire trust industry, probably right across Canada now, most of the companies have either one major or a number of major shareholders, similarly to Guelph Trust that appeared the other day.

2:40 p.m.

Mr. Cassidy: In other words, when you say you are comfortable with the ministry's recommendations about taking no action on ownership, you are reflecting the views of your members who overwhelmingly would not come under a 10 per cent rule, if it were to be brought in right now. Is that right?

Mr. Potter: I do not think it is only our members. I think that is true of most trust companies in Canada, whether or not they are members of the association.

Mr. Cassidy: You also state quite strongly in your brief that major investors in trust companies are in a far better position to hold management accountable for the operation than would be a more broadly diffused group of shareholders. I sense in that some criticism of the banks. Is that correct? Basically you do not think the present form of bank ownership is capable of holding management accountable particularly well.

Mr. Potter: The bank ownership question was for an entirely different reason. When the 10 per cent limitation was put

on, it was primarily to protect the Canadian identity of the banks. I think that was a major reason.

Mr. Cassidy: But you have not answered my question. You say trust companies are in a better position to hold management accountable because they are our major shareholders.

Mr. Potter: I think the key word you are using there is "accountability." If you have equity and you are a major shareholder, you are going to have a certain amount of money in there, your shares and so forth, so you want accountability. When you talk of the Crown/Greymac situation, you have a singular situation that is not normal.

As far as the banks are concerned, I am not saying management is not competent. If you turn the other side of the coin, if you did have major Canadian shareholders, you might not have had some of the loans that have been made in the past, similar to the Domes and so forth. You have a tremendous number of loans made by management.

In 1982, our loss ratio--and I have to agree we are not making the size of the commercial loans the banks are--was something like 0.20, compared to the banks' 0.92. In 1983, their loss ratio was 0.125 and ours was 0.250. Our loss ratios obviously speak well of certain things; of management, of credit control, of expertise in commercial lending. A fourth point could be accountability of ownership. I do not know. That is a debatable point. Certainly I would think they would have a strong say in it.

Mr. Cassidy: A number of witnesses have expressed concern, for example, as to whether the registrar should have the power to approve appointments of directors or of the chief financial officer and chief executive officer of a trust company. It is a very basic concern, along the lines of, "In that case, who is responsible if that particular executive screws up?"

In the Crown Trust débâcle, the management of Crown Trust proved to be totally impotent in terms of putting up any effective resistance to commands from the controlling shareholder, which one would have had to say in their judgement and experience were wildly out of sync with the traditions of that company and wildly imprudent in terms of its traditional mission as a trust company. Might it be that the practice of having controlling shareholders leads to a kind of supine or weak management, which is vulnerable to that kind of thing happening again?

Mr. Marchment: I would say no. You are dealing with human beings. If you find yourself in a position where you differ in some instance, you resign. That is certainly going to be public news. I do not think anyone of a company of that size can resign without it appearing in the newspaper along with the reasons. It gets back to whether you can legislate honesty.

Mr. Breithaupt: Or legislate against greed.

Mr. Marchment: Right.

Officers and directors should have a liability for acting in dishonest or derelict ways.

Mr. Cassidy: I accept that. That is not the case now, but it should be. Is that what you are saying?

Mr. Marchmont: I think it is the case now. Here are two chief executive officers of two major corporations, both of which have substantial shareholders. I cannot imagine being asked to do something that was against my moral principles, and if I were, that there was any way for me other than to resign. I am sure Mr. Colhoun would do the same thing.

Mr. Cassidy: We are talking ethics and morality now. None the less, we have a situation where not only does that kind of whistle-blowing fail to take place--nobody at Crown was prepared to put his job on the line or quit, go to the Globe and Mail and say what was happening--but also over the preceding year or year and a half when there was a frenzied multi-unit residential buildings activity, and a lot of it was in the hands of Seaway and Greymac and so on, but Canada Permanent and many of the other trust companies were certainly involved in some ways in MURBs, where were the warnings from the industry about how imprudent this was?

Was there pressure by your association on the department of insurance, I guess it is, in Ottawa and on the registrar of trust companies here as the two most important trust company regulators--I accept that you three gentlemen represent reputable companies--to get these operators out or to clean them up before they created the kinds of problems that eventually transpired?

Mr. Colhoun: Mr. Cassidy, that would have put the association in the position where it would have to carry on an investigation of the operations of its member companies. That is not the nature of the association. We are not equipped, we have not got the staff, nor do we have the authority.

Mr. Cassidy: You are here making representations before our committee in terms of things you would like to see done to facilitate the business of the trust companies. Although it is a voluntary kind of a show, you have a code of ethics which is at least part of the articles or the charter of the operations of your association. You are saying when it comes down to an actual ethical question your association has basically got a practice of walking on the outside of the street. Is that right?

Mr. Colhoun: No, no. You are talking about these MURBs.

Mr. Cassidy: Yes.

Mr. Colhoun: Let me give you another example. Crown was paying 200 basis points at one time for money of a similar term. I had no idea what Crown's book was like, and if they were in a matching process whether they were trying to buy money to match off something. They maybe had an investment where it made sense to do that. I had no idea of the internal workings of Crown and no way of assessing why Crown would be paying more than we were.

The fact that Crown was paying more got it a lot more deposits, but the simple fact is that I had no knowledge of why Crown was doing that. We know in retrospect why they were doing it, but I could not, and I do not think any member of the association could have gone in--well, we cannot go in--but sitting where we were with the limited information available to us could have made a determination of the nature of Crown Trust problems from the outside. It was totally impossible.

Mr. Mitchell: You are here really because you feel there has been a reflection made and you see this white paper proposal as being one that is going to assist in ensuring that you express the concerns of your association and you want to ensure that proper controls are in hand to be able to offset that in the future?

Mr. Colhoun: It is no comfort to us to see a company get into trouble. That reflects upon the industry and it really is to our detriment as much as anybody else's that a situation like this should arise. Our approach to this would be that we would try to prevent it if we knew anything about it.

2:50 p.m.

Mr. Cassidy: Let us suppose you were in the car business and a dealer in town decided to offer brand-new Chevrolet Impalas for \$5,000. You would begin to have an awful lot of questions about what the hell was going on when you knew you had to pay \$9,000 wholesale for the same cars. When a company like yours starts to pay two basis points more for deposits than you are paying, is that not the same kind of situation?

Mr. Colhoun: Would we wonder about it?

Mr. Cassidy: Yes.

Mr. Colhoun: After we wondered about it, what else could we do?

Mr. Cassidy: Did members of the association go to the regulators, saying "There is something screwy going on," and urge them in the strongest possible way to find out what was going on?

Mr. Marchment: I will say something that Mr. Colhoun said earlier.

We talked earlier about the problems of matching. As you know, everyone has had those problems. From time to time, you make the decision. If you have excess assets and a deficiency or liabilities, you will try to match and lump the loss so that you could well pay 200 basis points more for your deposits, get it over with in as short a period of time as you can, and that would certainly do it. You have locked in your loss. You are not worried about the loss turning out to be 400 or 500 basis points, because the interest rates have changed on you; you have hurt your earnings but protected yourself against greater losses that may occur.

When you see someone doing that and you do not suspect there is some dishonest reason, you think it is his strategy for the moment to correct a problem he has. It is as simple as that. We all do it from time to time, not to that degree, but we do it.

Mr. Cassidy: I appreciate that. None the less, there was enough street talk around to know the kind of business Mr. Rosenberg was involved in. Although you knew he had only recently taken over Crown, you also knew the type of operation he had been running at Greymac.

The reason I am asking the question is this. We had the chartered accountants here yesterday, and we were talking about the responsibilities of auditors and so on. Nobody in the ministry has been fired for losing \$300 million or \$400 million of public funds. No minister has resigned. The accountants are saying, "It was not any our people doing it." If the lawyers were to come in, they would probably tell us the same thing. Certainly, there have been no disciplinary actions against lawyers or accountants. Your association is saying, "We have a code of ethics, but we did not feel it was appropriate to act."

The problems and concerns about the operations of Greymac and Seaway began almost two years before the eventual crash and the legislation in December 1982. This was going on for a long time. The operations with the multiple-unit residential buildings were going on a long time. You had this enormously rapid growth of Seaway, which increased something like 15- or 20-fold in size over a short period, two years. You know the business and you know it is relatively difficult for a trust company to acquire the capital to permit that kind of rapid growth unless something very peculiar is going on.

If it were good and legal, then would I suspect some of your members would like to do it too. If it were not good and legal and represented unfair competition, I would have thought that, ethics aside, you would have an interest in blowing the whistle and getting that kind of thing to stop, both in that it would hurt the industry and because it is unfair to reputable operators who are continuing business in the normal way. I put that case to you. Is there nobody in this entire province who bears any responsibility for this?

Will we wind up scapegoating Rosenberg, Player and Markle and saying they were just rogue elephants and leave it at that? Can your faith in single owners survive the fact that certainly Izzy Asper was in it for the money when he bought and then very quickly resold Crown and that Conrad Black was demonstrably in it for the money and when it was no longer convenient for him to have Crown, he let it out, despite its having been in the Argus group for many years?

Mr. Marchment: I might just come back on this and answer you in a different way. When we went through difficult economic times, having a major shareholder was a godsend in that you could not have a share issue to increase your capital. They seemed to be the only ones who were prepared to step up and invest more in your companies at a time when you could not get the money elsewhere. In my mind, there is no substitute for having a support in such times.

When you are talking about our competitors, and what they do and what we think of them, we as a group or as individuals may not like someone cutting into our share of deposit-taking, which they obviously are by paying greater rates. But, complain as much as we might between ourselves, we cannot assume that the other person is dishonest. We know he is giving us a problem, but we really do not know what is motivating him.

In retrospect, I guess you can ascribe whatever you wish. You say those companies had great growth, which is true, but that is not available on a current basis, because statements are not issued that currently. Even if you did see this growth of Seaway, you might be envious of how they managed to do it and wish you could do it, thinking only in the terms of how you traditionally conduct your business and that someone may have a better way of doing it and therefore you too should be amending your procedures.

I would think you would be on dangerous ground to assume every time that someone becomes extremely aggressive that it is for dishonest purposes. Therefore, I think you have just got to continue to pursue your marketing as best as you can.

Mr. Cassidy: What about the multiple-unit residential buildings and, let us say, a technical problem but also a very real problem, the question about the valuation problems inherent in MURBs with respect to the Income Tax Act, which was prepared to accept a valuation that was far in excess of fair market value because of the inclusion of soft costs?

I spent an hour last night working through Terry Belford's book. I still do not understand how on earth this soft costing works. It is a legerdemain that I cannot quite fathom. None the less, in terms of generally accepted accounting principles, it stinks.

Was that not identified within the trust companies as a problem and one that could either trip you up or lead to excessive valuations for mortgage purposes and, therefore, to either unfair or unwise competition?

Mr. Marchment: The MURB program, as I recall, was a federal program designed to achieve certain goals that they wished to achieve. Not all of us participated in it.

Mr. Cassidy: But many of your members did, I believe.

Mr. Colhoun: I am not sure that very many of the majors participated in that. We certainly did not, and we never paid any attention to what these companies were doing; it was not of any interest to us.

3 p.m.

Mr. Marchment: I know we were asked to participate, but for various reasons, we did not; nor did National Trust. I do not know who did. None the less, I am not against the program. If

shortcomings happen to come out of it, and we are on to the extreme again, they would be things we would not monitor as an association.

Mr. Cassidy: Okay.

Mr. Potter: Mr. Cassidy, we would not monitor the values, and you said yourself that the Department of National Revenue accepted the valuations.

Mr. Cassidy: Yes, but I think it is also quite clear that the valuations accepted by DNR would not be accepted under generally accepted accounting principles.

Mr. Potter: I could probably agree with you, but all I am saying is that if DNR accepts them, how can the association or an individual member of the association be critical because most of the majors were not involved. There were probably only a small number of trust companies involved in multiple-unit residential buildings. I am just guessing, but the ones you are talking about probably had 80 per cent of the MURBs.

As you say, DNR accepted a valuation. How could we as an association, or an individual company say, "DNR, you are wrong; the valuation is this." In most cases we did not know the particular MURB, we did not know the valuation and we did not even know the location of it. You can see the problem.

In a similar case, if one of your neighbours advertises his house for \$270,000, and you have a similar house up for \$150,000, you might be jealous and say, "I do not think he will sell it." You might be critical of it, but the fact remains you cannot do anything. If he does sell it, you are going to say, "I just do not believe it." You say DNR accepted it. We do not know the properties in question, and that is exactly what happens. That is what it amounts to.

Mr. Cassidy: I have no problems with some of this. Basically, we have seen this happen in other societies where people chose not to see what they did not want to see, or chose not to recognize what they did not want to recognize. If we all do that, a lot of the fabric of a society basically runs down. I have not thought through entirely the question of what the ethical principles to be followed in business might be.

I raise that as a general question. If everybody says, "I will do what is within my rights, but I am certainly not going to look over my shoulder to see what anyone else is doing," we could quickly see a rapid decline in the standards of public morality and business morality in this country.

Perhaps I could go on and ask some other questions. On valuation, you questioned the use of fair market value or market value as proposed in the white paper. You say in questioning it that this might lead you to be uncompetitive relative to other financial institutions such as the banks. You seem to be suggesting the banks are valuing for mortgage purposes at something which exceeds fair market value. Is that what--

Mr. Colhoun: Mr. Cassidy, all we are saying on that score is we are all lending money in the mortgage field. We do not know what the principles of valuation will actually be when they appear in print. All we are saying is that, because of the unhappy events that have occurred, we should not be placed in a position where we cannot value a property in the same way as a bank, an insurance company and a pension fund would value it if they were being asked to lend the money on the same thing.

Take your house, for example. We should be able to value your house in the same way as the bank would value your house, in the same way as a pension fund or an insurance company lending you a five-year mortgage. If for some reason the principles of valuation are different because of this unhappy event, you have really put us out of that market.

Mr. Cassidy: Are you not reopening the door to a new round of MURB valuations or that kind of thing, this kind of crazy valuation where people say, "If I had a hotel on this property in 10 years, it would be worth so much and, therefore, that is the valuation--"

Mr. Boudria: That is what they did.

Mr. Cassidy: That is what they did; that is right. Are you not opening the door again to that kind of abuse?

Mr. Colhoun: We are really saying, do not make it more difficult for us to compete in the market than others. We have to create assets. We cannot take deposits unless we can create assets. For Ontario companies, coming back to my own, that have the higher multiplier above 20, we have to comply with five tests, the first of which is the quality of assets test. Essentially, if we are not going to go into cash and government bonds, we are confined to residential mortgages. If we cannot find the asset, then we are hamstrung in the business.

Mr. Cassidy: So you are not opposed to some limits on valuation.

Mr. Colhoun: Some reasonable principles of valuation, but they should apply across the board. They should not apply to just one member of the lending community. That is all we are saying in that sentence.

Mr. Cassidy: This morning we had a lengthy discussion about disclosure and the question, for example, when Seaway was put on the month-to-month licence, of whether that should not have been made public, released to the public, or whether there should be a monthly bulletin from the registrar rather like the Ontario Securities Commission bulletin. Has your association any views about disclosure as a means of helping to back up what the regulators do?

Mr. Colhoun: What the minister is doing at that point is trying to watch a company, perhaps trying to rehabilitate it. If you make a public disclosure, you just drive that company straight into the ground.

Mr. Cassidy: Is it not correct that banks, because their shares are widely held, are essentially under exactly that kind of requirement from the OSC?

Mr. Colhoun: The banks? I do not follow you.

Mr. Cassidy: Disclosure is required, including materiality, under OSC regulations in terms of any substantial change in the affairs of a bank. Therefore, are the banks not under exactly that kind of disclosure requirement now?

Mr. Colhoun: I do not think I follow you. I do not think they are. My own view is they are not. Take the Continental Bank of Canada, which had some problems. All that happened was the inspector general stepped up and forthwith made sure that bank was secure.

Hon. Mr. Elgie: The governor of the Bank of Canada said "Don't worry." That was the end of it.

Mr. Potter: The statement made at the end of it by the governor of the Bank of Canada--

Mr. Colhoun: There was no question of being under examination or under a limited licence. All that happened is a statement was made saying, "This bank is sound."

Mr. Breithaupt: Perhaps we could get the minister to comment on that theme. I was not aware that banks as such had requirements under the OSC in this matter unless certain particular securities were issued. Are there general overview provisions the OSC has that it reports upon routinely?

Mr. Crosbie: Not that I am aware of. I thought it was in connection with their being an issuer, looking at standard rules that would apply there, but I really do not know.

Mr. Cassidy: In addition to prospectuses, because the bank's shares are widely held, they have to produce quarterly statements and annual statements and make them public, which is not required of trust companies.

The gentleman here indicated--

Mr. Breithaupt: Do they have to make their reports to the OSC?

Mr. Cassidy: They have to make them public. They effectively publish them. They are issued through the Financial Post services and that kind of thing.

Mr. Breithaupt: But I thought we were talking about the OSC opportunity of setting that tone which, if it had for the trust company a similar bulletin or whatever, might be a useful project. I did not know the banks had an OSC requirement.

Mr. Cassidy: The requirement is because the shares are are widely held. It is no different from a manufacturing company in Waterloo whose shares are widely held.

Mr. Breithaupt: But not a requirement from the OSC.

Mr. Cassidy: Sure, it is under the securities legislation.

Mr. Crosbie: If the prospectus requirements of the material change in circumstances affecting the value of the shares that are being traded publicly, there is a duty to disclose.

Mr. Breithaupt: In a prospectus for a new issue.

Mr. Crosbie: No.

Mr. Cassidy: No, on a regular basis.

Hon. Mr. Elgie: If their circumstances have changed, yes.

We will check that with the chairman.

Mr. Breithaupt: It would be useful to know what the rules are as we look to bringing the trust scene into some equivalent pattern of information.

Mr. Cassidy: This is the point I wanted to make to Mr. Marchment and his party.

Mr. Chairman: Excuse me, Mr. Colhoun wants to make a comment.

3:10 p.m.

Mr. Colhoun: (Inaudible) analogy, Mr. Renwick. I appreciate it very much. If a company that has a debenture issue or bond issue outstanding is getting into trouble, the trustee will become aware of this. We have agonized over this many times. We do not want to make a public disclosure of breaches of covenants. We will go and talk to the company. As soon as we do a public disclosure of the type you mentioned, that company's ability to get any form of credit is gone. You have driven the company into bankruptcy.

You look at a company that is having problems and you do not stand up on the rooftops and announce this fact; you try to work with the company to rehabilitate it. That happens all the time in the commercial field. If the registrar had stood up on the rooftops and broadcast that he had put a company under a limited licence, I think there would be a tremendous run on the deposits. There would not be the assets, the liquidity, to meet that run, and you would have problems in spades.

Mr. Cassidy: Maybe I can ask the question this way. Essentially, you have said trust companies are closely held whereas the banks are broadly held. Therefore, these two competing

groups of financial institutions come under different regulatory requirements. The banks come under the Ontario Securities Commission, along with all publicly held companies, and the trust companies come under regulation.

Mr. Colhoun: We are under the OSC for the same reasons.

Mr. Cassidy: Pardon?

Mr. Colhoun: We are all security issuers for the same reasons and subject to the OSC in the same manner.

Mr. Cassidy: I do not believe so because, being closely held, you are not required to file.

Mr. Colhoun: Any substantial change in our fortunes with anything that is happening in our company would have to be disclosed in this same way.

Mr. Cassidy: In the case of Seaway Trust Co. and Greymac Trust Co., those requirements did not exist.

Mr. Crosbie: Seaway had to make a disclosure of its investment in the Cadillac Fairview apartments and file it with the OSC.

Mr. Cassidy: Did Seaway ever make a disclosure about the fact it was put on a month-to-month licence?

Mr. Crosbie: I am not aware of that.

Mr. Breithaupt: They would hardly announce it in public.

Mr Cassidy: It is material.

Hon. Mr. Elgie: I think the issue we need to zero in on, as we talked about with Mr. King, is what the impact is on the company if you announce to the public the moment you put it on a short-term lease. Are we going to destroy members of the financial institution? That is what we as a committee need to know.

Mr. Colhoun: Who are you trying to protect? You are trying to protect the depositor from what would be a disaster.

Mr. Cassidy: Suppose I am a depositor. In fact, we have another example because the depositors will have had more than \$20,000 in some of these companies and, basically, apart from maybe knowing what the spreads are, they have no information with which to work.

Mr. Colhoun: To carry on with your statement, you make this announcement. I and a lot of us here have \$60,000 or \$80,000 in one of these companies and we all end up the next morning at the wicket. That is the end of it because the company does not have at that point--

Mr. Cassidy: It sure gives the regulator a lot tougher power than the regulator proved to have in trying to clean up those companies. The regulator diddles them around--

Mr. Colhoun: The company is the trustee in bankruptcy of those companies at that point.

Mr. Cassidy: Do you not think it might have saved us a lot of money, though?

Mr. Marchment: It may get you in a legal suit, too, because you have forced a company into bankruptcy which would not necessarily have been forced into bankruptcy. In the United States, there is a list of banks on a watch list, and the number of banks on the list goes up and down, depending on economic conditions. By and large, it works quite well.

Mr. Cassidy: Is this a public list?

Mr. Marchment: No, it is not. It is a list kept by the Federal Reserve Board, I guess, which means these particular banks are scrutinized on a continuing basis and counselled to correct their condition. When they do, they are withdrawn from the list.

Mr. Gillies: But it is not public information, is it?

Mr. Marchment: It is not.

Mr. Gillies: Can you think of a jurisdiction in the world where a financial institution in some difficulty would be public information?

Mr. Marchment: It would not be for the same reason Mr. Colhoun says. You would have a run on the institution and you would force it into bankruptcy.

Mr. Cassidy: Which would have been better, to have had Greymac or Seaway go into bankruptcy at the beginning of 1982 or to have had the events that took place at the end of 1982, with all the undermining of credibility of your industry plus the cost to the taxpayers and the trust industry through the Canada Deposit Insurance Corp.?

Mr. Chairman: Mr. Cassidy, you seem to be getting off the track a little bit.

Mr. Cassidy: No. I think this is--

Mr. Chairman: I really do.

Mr. Crosbie: I cannot give you the names for obvious reasons, but what if we were to trot out the companies that are currently carrying on business successfully and went through a distressing period in which we accommodated and worked with them until they got out of it? Would it be better for them to be bankrupt today or still alive and well?

Mr. Cassidy: What we have seen now is clear evidence that the registrar was incapable of getting anywhere in getting the companies to shape up.

Mr. Gillies: You are suggesting a scorched earth policy. The regulation would be the registrar going around cleaning up the shells of burned-out trust companies. What you are recommending would be a travesty.

Mr. Cassidy: I understand there has been a trend towards tightening up securities legislation in this province. Since 1978 the Ontario Securities Commission has enjoyed a great deal more power, and one of its basic powers is power of disclosure. If something adverse is published about the companies under the OSC, they see it right away because the capitalized value of the shares goes down by \$5 million.

Mr. Mitchell: If the company goes bankrupt, nobody gets anything.

Mr. Gillies: What the ministry is trying to do and the white paper is trying to do is to provide a regulatory framework to attempt to minimize problems. With respect, if we were to follow the course you are suggesting, as Mr. Crosbie said, if any company got into trouble, it would be telegraphed to the public and the depositors. It would lead to a lot of institutional failures.

Mr. Crosbie: There is a substantial difference between the financial institution and another corporate reporter to the Ontario Securities Commission. If the company has some major difficulty, it can be reported, but unless it goes out into the market trying to raise money, that incident might not affect it. By the time they get around to going out for new capital, the situation may have cleared itself up and they could be in a good position. But a financial institution's day-to-day existence depends on that cash flow over the counter. Although you could clear it up in six months, the announcement could put it out of business immediately. It does not have that period of recovery that a nonfinancial institution has.

Mr. Cassidy: I want to go on to another question, but suppose you went to Dalhousie ward in my riding today and said, "The position expressed by the industry and the government is that it is okay for four families to control \$80 billion worth of assets through some of the major trust companies in this country; it is okay for huge economic power to be in the hands of a few people, and, in addition to that, it is the policy of both the industry and government that there should be no disclosure over what the hell is going on with the exercise of that economic power." People would say, "You have to be crazy." They might be tempted to say, "That is what they told us was going to happen with the concentration of economic power in the latter stages of capitalism."

Hon. Mr. Elgie: The dying days.

Mr. Cassidy: That's right.

Interjections.

Mr. Crosbie: Assuming there is a trust company operating in your riding, if you went to the employees of that trust company and said, "We have two options, one to work with this company and keep it alive and keep your jobs and the other to make an announcement in the local paper and put you out on the street," they could not understand why we would close down a trust when we had an alternative of keeping it alive.

You may recall the severe criticism that was levelled against us when the receiver had to move in in October. People marched on Queen's Park and got quite a bit of support. That was far more an extreme situation than any we have been talking about of a company being offside in some investments.

Mr. Marchmont: I hate to make all my comments personal, but with the conversation being on the negative side, I would like to give one reference to the positive side.

In 1974 Guaranty Trust was about to be one of the bankrupt companies. As the sixth largest trust company in Canada, that would be to the disadvantage of not only the company but also the image of the stability of financial institutions in the country. We are a federal company. Discussions were held at the federal level. We arrived at a way in which we could carry on business normally even though we were undercapitalized.

You will recall that was the first time high interest rates hit the country. You could not issue shares of any kind at that point. If you were tight for capital at that point, it would be all the more reason you could not do it.

Our shareholders stepped in and put the capital in. It was our sole and only source. One year later the company was back in business, as everyone else was, meeting all the tests and has gone on since that time until now we are a company that has \$6 billion under administration. We would not have existed if the attitude had been, "Let us put it up on the bulletin board." We would have had a serious run on deposits. At that time I guess we had about \$1 billion in intermediary assets. It is a sizeable amount to have and it would have been unnecessary.

When we are talking about these problems and we are so focused on Seaway etc., which is all negative, remember there is the other side that could be all positive. It is incumbent upon regulators to be as conscious of making a positive contribution to the financial industry as it is to be acting in negative circumstances.

Mr. Cassidy: I just want to--

Mr. Chairman: Just a second, Mr. Cassidy; I want to ask Mr. Crosbie something. I would be interested in how many companies we have helped get through the difficult times, where we did not announce it and they worked their way out of it. Do you have some figures on the positive things?

Mr. Crosbie: I do not have any at my fingertips. Obviously, I have not been at the ministry that long, but I know of some in recent times, in the last couple of years.

Mr. Breithaupt: Would you say there are several each year that have to be sorted out?

Mr. Crosbie: Yes; at least two or three.

Mr. Cassidy: It might be useful if we could have a memo next week which would say what it is that the trust companies, if closely held, are required to make public, both as to published reports and as to reports to authorities which then in some way become public.

It is my impression the only thing that is required is the reports to the registrar, which take many months or many years in some cases to be made public. Mr. Marchment indicated that because there was not timely information, it was very difficult for members of the more reputable companies in the industry to actually know just how rapidly Seaway was growing over the period, say, from the beginning of the end of 1982. I believe that is what you said. Is that correct?

Mr. Marchment: I would not necessarily be aware, but I think with the normal time it takes for all of us to issue a report, whenever you saw it a great deal of time would have passed. I am not saying we would have monitored it.

Mr. Cassidy: It would not come as a matter of course because there was a prompt and timely reporting taking place within the ministry?

Mr. Marchment: I guess it depends whether their stock is listed and so on, all of which are the requirements for filing. I rather doubt that.

Mr. Crosbie: Mr. Cassidy, let me qualify your question this way. You talk about a closely held company. Really what we are talking about is a publicly traded company and one that is not traded publicly.

Mr. Cassidy: Yes.

Mr. T. P. Reid: Could we have those broken down? Do we have a list of which ones are privately held and publicly held?

Interjection: Yes, we can take it out. It will take a few days, though.

Mr. Cassidy: I just want to conclude by--

Hon. Mr. Elgie: The different requirements they have, too.

Mr. Cassidy: Yes. Does the ministry or the registrar have a lot of background research that was done in connection with the white paper which it should share with the committee on questions like this?

Mr. Crosbie: Not a great deal, no.

Mr. Cassidy: You have some.

Hon. Mr. Elgie: As part of the committee, one of the authors did significant personal research and review of the issues. If you are asking if for each of the areas in the white paper there was a document prepared, no, there was not.

Mr. Cassidy: Mr. Marchment, both Jim Renwick and I have expressed some comments along the lines you have expressed in questioning this regulation which is proposed here. We have felt, however, or at least I have felt, that the tradeoff is that if you distribute the ownership more widely you can justify a lessening of the regulation. Since you are opposed to any ownership restrictions, is there some other tradeoff you can suggest that could be used to justify a loosening of the proposed regulatory framework?

Hon. Mr. Elgie: Give them some idea of the sort of things that have been talked about so they have an idea of the direction.

Mr. Cassidy: I was just looking at the brief here. You are wondering about circulating minutes, disqualification of the CFO--

Hon. Mr. Elgie: Mr. Renwick was talking about a public member on the board, was he not?

Mr. Renwick: Yes, public interest.

Hon. Mr. Elgie: A public interest member of the board.

Mr. Cassidy: As a matter of fact, Mr. Jackman has suggested the same thing. He suggested there should be what he called "depositor-shareholders" and a new class of directors should be established to represent the depositors' interests. That is just a brief line in a Financial Post article. I am not sure whether you are familiar with the proposal he has made.

Do you have some ideas of other tradeoffs that might be made to balance a reduction in the level of regulation from what is proposed in the white paper?

Mr. Marchment: As more discussion on what regulations we are specifically talking about take place, we will have more input. Our basic position is that we wish to be treated equitably with respect to filing or anything else with other members of the financial industry at large; that would include the banks, insurance companies or whatever.

I do not think we should create procedures that are of little value. You mentioned the minutes. I can well imagine the registrar sitting with minutes from 44 companies or 87 or whatever the number is. He could not possibly take time to read them all. There are other ways to achieve what you would be after.

I do think you have raised some good points. I would feel that all trust company financial statements should be released publicly. Every depositor has a right to see how you are progressing. There are ways to provide information. I would think we should have some kind of agreement as to what you would do. For most of us it would not mean anything different from what we are doing currently. All we are talking about is the universality of its application.

Mr. Cassidy: It might be useful if in your association you were to perhaps file a supplementary at the end of a brief with some suggestions in terms of things that could be done which would be both helpful and not excessively burdensome in terms of your own cost to administration. I suspect there is a fair amount.

Are you concerned about foreign ownership of the industry?

Mr. Marchment: No, not at the moment.

Mr. Cassidy: Apart from Canada Permanent, what other companies are foreign-controlled?

Mr. Marchment: I would say the trust companies that are subsidiaries of the Canadian arms of the finance industry are the only ones that are foreign-owned.

Mr. Cassidy: Who would that be? I am not sure--

Mr. Marchment: There are only three finance companies: Household, Associates and Avco.

Interjection: Beneficial.

Mr. Marchment: Beneficial.

Mr. Cassidy: So would you support a rule similar to what is in the Bank Act with respect to foreign ownership of trust companies?

Mr. Marchment: I cannot comment on that without giving it further thought.

Mr. Cassidy: What would happen if Mr. Jackman, for example, were to get a fat offer from a group in the United States or in Brazil or something like that which would lead to the transfer of control of \$10 billion, \$15 billion or \$18 billion worth of economic power in Canada into foreign hands? Would that be acceptable as far as the industry is concerned?

Mr. Marchment: As I recall, there is a limitation in the act: you cannot have more than 25 per cent.

3:30 p.m.

Mr. Boudria: This morning we had a presentation which was referred to by Mr. Cassidy just moments ago. In many ways it had some comments that did not coincide with what you are saying now. I would not like to say they disagreed with what you say now,

but they reflected a different opinion. I suppose that is a good way to describe it.

One thing the intervener this morning referred to was the smaller trust companies. I notice your presentation seems to state you are in agreement with the white paper in so far as new incorporations, minimum capital required and those kinds of things are concerned. Am I correct in saying that?

Mr. Marchment: Yes.

Mr. Boudria: If that is the case, what would your comments be on what we heard this morning, for instance, about serving a region of our province, again using my own region or another one, where there are very few or no trust companies operating in a given area? Do you think it would hinder new, smaller trust companies from starting in those areas?

Mr. Marchment: With higher capitalization?

Mr. Boudria: Yes.

Mr. Marchment: It may, yes, but I with the number of trust companies we have, we are all searching for ways to expand our markets. If there were such an area, I would think some of us would like to service it.

Mr. Boudria: It is interesting you say that. I come from a riding that has not one trust company office in the whole constituency. I find that an interesting comment. The riding I serve has 71,000 people, according to the census, and there is no such thing as a trust company where I live.

Mr. Marchment: But there are banks.

Mr. Boudria: Yes, there are some banks but mostly there are caisses populaires; they form the bulk of the financial institutions in my constituency.

Would you agree the public convenience and necessity feature of the present requirements would not be served as well with this increased capital requirement?

Mr. Marchment: I think we are talking about different things. We have two kinds of businesses, the fiduciary and the intermediary. In the intermediary, we compete with all the chartered banks--

Mr. Boudria: And caisses populaires.

Mr. Marchment: And caisses populaires, credit unions, etc. When we are looking at population in an area and you say you do not have a trust company, then you must not be talking about it for your banking needs.

Mr. Boudria: They do not exist for any needs, but I suppose you may say that so far as the banking needs are concerned, maybe the public convenience and necessity is not there

for that particular purpose because it is already served by another mechanism, as you say. But what about the trust function itself?

Mr. Marchment: What has happened is that trust functions have been concentrated in companies to provide a higher level of expertise which you cannot afford in small operations. We used to have trust operations in most of our branches, but we do not do so any more. They are concentrated, and I am not positive but I would say they are in four or five locations in Canada.

The local manager calls upon our trust facilities in one of those major centres to go out to wherever the potential customer is located to deal with his problems on that basis, rather than have the facilities in a local office.

Mr. Boudria: Then again, using that same principle, you must have a local branch to initiate that request.

Mr. Marchment: Not necessarily. We deal in areas where we do not have branches. We are quite prepared to go anywhere in Canada to talk to anyone about a fiduciary service, but the calibre of person required today is much higher than you could afford to have in an ordinary trust branch banking office.

Mr. Boudria: So you are saying a small regional trust would not be capable of handling that type of thing as well.

Mr. Marchment: No, I do not say that; but it would be very expensive for them. They have to pay a wage that is certainly equivalent to that of their banking manager, and then it becomes a question of economics: What volume of people do they get walking in for that kind of trust service?

Some of the trust services, such as registered retirement savings plans, can be handled by the person who does the deposit business. But if you are talking of wills or different kinds of trusts, I doubt if you have people coming in more than once a week and probably less than that. Then it becomes more complex and you really need an expert to handle it.

Mr. Boudria: Using that same rationale, I find the tone of the whole thing difficult. I am sure anybody leading a large corporation would say the small operator next door cannot possibly do things as well and efficiently as the large one can, because the small one has a much smaller volume and still has to pay all these expensive requirements. The big car dealer may say that of the small car dealer and the big chain store operator of the small corner store operator.

Mr. Marchment: I am not saying that. I am just saying if you are talking--I do not know where your constituency is.

Mr. Boudria: It is in eastern Ontario, but it does not make any difference.

Mr. Marchment: I am just saying it is expensive. You could well have someone trained as a trust officer who starts a

trust company you are considering in your locality. He can do not only banking but also trust work. But it is a question of volume. Over a period of time, you have to make the decision that you want to be in that business. You have to incur that expense and it is not profitable, but over a period of time it will become profitable and you can increase that department and so on.

Mr. Boudria: What you are saying now may be quite true, but going back to the presentation we had this morning, the person who spoke to us said--and I am paraphrasing what he said--we should be encouraging exactly that type of thing to happen. In other words, smaller trust companies in the east should get into the trust functions that have been laid aside over the last few years and take on what has been referred to as the more banking type of business your industry is in.

Mr. Marchmont: I do not agree with that.

Mr. Colhoun: I think the dispute here is partly a result of where you come from. We started in 1898, essentially in the stock transfer and bond trusteeship business, a business that came immediately on the books. Within the last five years, I have noticed appointments of executorships, wills that have fallen in for administration, where the appointment to our company came in 1924. That is the lead time.

You come in and appoint us as executor. You expect to go on for another 40 to 50 years and we have to keep that document on our books and service it. From time to time, every couple of years, we will write to you and tell you what has changed in the legislation and suggest to you, maybe for that reason or for family reasons, it might be appropriate to take another look at your will. There is constant servicing and there is no fee for that. It takes a lot of financial muscle to maintain that. So one does not build up the trust business very quickly.

If you get into pension fund administration, that involves complex accounting for the record-keeping and you have to have the expertise of investment management. If you get into the statutory trusts like RRSPs, certainly you build that up if you can. That is the element of trust business you can hope to get in the immediate future. Trust business as such does not come very easily. It takes a long time to develop it and most of us who come in come in on other roads. We came in through the corporate side.

3:40 p.m.

Nowadays the larger companies dominate that business, because it requires substantial computer facilities to carry it on. Corporate trusteeships require a sense of knowledge of complex documents that Mr. Renwick has worked on for many years. Entry today is largely through the retail banking business. That is where it comes today.

Mr. Gillies: I am not sure if you gentlemen heard or have seen the presentation this morning. I am not sure you may be picking up from Mr. Boudria's questioning quite how critical the

presentation was this morning. I would like to quote from it. This is from the Hughes, King and Co. presentation.

It said: "The industry"--meaning the trust industry--"would lead you to believe that the ETA business is unprofitable and the personnel requirements for such operations are difficult to develop. However, it is interesting to note that the largest trust companies still do provide these services, albeit with less emphasis and, regrettably, less professionalism. This is borne out by the many horror stories that circulate regarding ETA services of trust companies. In my opinion, citizens of this province are poorly served by the trust industry with respect to fiduciary business." Could I ask you to comment on this?

Mr. Colhoun: That is an opinion, an observation.

Mr. Gillies: it is very strong.

Mr. Colhoun: Yes, but that is an observation. Was it Mr. King who made that comment?

Mr. Gillies: Yes.

Mr. Colhoun: That is his observation. We have just spent \$6 million in our company upgrading our trust systems because that is the business we want to be in as well as the intermediary. There was a time when our trust revenues, our fees from trust services, were about equal to the net investment income from our intermediary side, but because we happen to have lawyers, chartered accountants and a great number of other experts and highly qualified investment officers on the trust investment side, the costs of running that operation are higher than the costs of running the intermediary operation.

Therefore, when you look at the bottom line on a divisional basis for a given amount of revenue, you perhaps can get more out of the intermediary side, net, than you can out of the trust side. In our company, our trust business is very important to us and we have made that commitment to it. I would dispute Mr. King's views.

Mr. Mitchell: You gave a figure today. Would you give us that figure again, please?

Mr. Potter: I am talking about the approximately 40 companies within the association. On the deposit side it was \$47 billion. On the ETA side it was \$87 billion.

Mr. Gillies: To complete the thought, speaking for your own company as one of the larger trust companies, your contention would be that you are investing in and putting an effort into the ETA business, and that this would be common now with the larger trust companies.

Mr. Colhoun: Concerning the five large companies, they are all very much committed to the ETA business.

Mr. Boudria: I have one more question on the limiting of ownership. Your group states that ownership should not be limited to 10 per cent. I noticed the rationale you used. First, you are saying, "Major investors"--I am quoting from page 3--"of trust companies are in a far better position to hold management accountable for the operation of a trust company than would be a more broadly diffused group of shareholders."

In other words, I think you are saying that a major investor is in a good position to keep management in line, to strong-arm them into staying in line when that is required. Why is it not correct to use the same kind of logic to say that the owner of a trust company could also strong-arm management into being out of line, leading to some of the incidents we have seen happen over the past 18 months.

Mr. Marchment: I tried to address that earlier. Let me try again. If you are a major shareholder, you will undoubtedly be on the board. You will probably be on an executive committee so that you have very direct contact with the management of the company. Their role is not to participate in management. That is your chief executive officer's job. He is paid to make the company work well and if he does not, because he has made the plan and the programs, etc., you replace him and get another one.

The principal shareholders do not sit by themselves on executive committees. There is always a quorum. There is always a quorum on the board. I would say, if anything, they lean backwards not to get involved in management decisions. On the other hand, they are there to review the decisions that have been made by management, namely, the loans that have been advanced and the basis on which they have been advanced and all the other matters that come before them. They could well disagree with you when you are proposing to start some new type of business venture they do not feel the corporation should be on. They act as a sounding board and provide a very positive contribution.

The question you are raising was raised before, that is, could they tell you to go make a loan to something or other? The answer to that is no. If you have got all your procedures, etc., you can suggest we might look into something. It has got to start at the bottom and become documented and appraised and everything else and come before a committee, not an individual, for approval.

Mr. Boudria: Has not recent history demonstrated otherwise? There have been three companies in which loans have been made in an unusual way. Procedures, if they were followed, were followed very loosely and all this kind of thing. It has just happened.

Mr. Marchment: My answer is unchanged. If they do participate in management, they have no other option than to resign, unfortunately. We have personal worth. We are not servants of a corporation and do not do everything just because we are that. You have to be prepared to stand up for your own ideas. That is how we are judged.

That is how our companies get business. Our clients believe we are honest and believe we are going to try to do well by them. Therefore, we are not going to do something stupid that will affect their relationship with us.

Mr. Boudria: I would like to think that is generally true of all of us, regardless of what profession we are in. I am sure it is generally true in your profession, as I hope it is generally true in the one I happen to have right now.

The fact still remains that we are here at this committee meeting today because incidents have happened over the past 18 months in which it seems rather obvious that owners of trust companies have had their way to do whatever they liked. What they seem to have liked doing is taking depositors' money and investing it as if it was their own personal money. I know that is not what they are supposed to be doing with money, but it appears that is, in fact, what happened.

Mr. Marchment: In one specific instance.

Mr. Boudria: It was more like three.

Mr. Marchment: It is one group.

Mr. Potter: You said in your own riding that you primarily had the caisses populaires.

Mr. Boudria: Yes.

Mr. Potter: There have been problems in the caisses populaires that are very widely held. There were problems in Quebec just a short time ago. In fact, it was a president of a trust company who was seconded by the government for well over a year to try to get it reorganized again. I am sure you are quite familiar with that.

On the other hand, you are trying to single out trust companies because one instance happened in the trust industry. You have the same situation with the caisses populaires, with the credit union movement and so forth, where it is widely held in some instances. You will still have these problems, but as Mr. Marchment is trying to point out, management has a consideration. You have to look at the integrity of the management.

The management in most trust companies has expertise. I do not know how many years Mr. Colhoun has been with National Trust, but I would assume he has been well over 30 years with National Trust. You can go right down the list and you will find the expertise.

I think what we are doing here is majoring on the minor. This entire situation has become talking about one or two companies. As Mr. Marchment said, it has become rather negative. I think we should be talking on the positive side.

Mr. Boudria: I suppose that is the nature of one of the things we are doing. As a committee, we are trying to repair and fix legislation so it no longer has problems in it. The very tone of that, of course, makes some things negative. We are trying to find what is wrong, so by its very nature it has to be this particular way. We are not gathered at these committee hearings to pat everybody on the back and say how well a particular industry is doing. Maybe we should be doing that as legislative committees every now and then, but that does not happen to be the way this works. We are here to repair something.

Mr. Potter: I realize that, but I still think a positive approach can be taken. Like Mr. Marchment and others, I find it has become more negative in one or two things. Eventually, if you sit on these companies, you can see what happened with the government. They did take action and we supported that action. If nothing had happened, the companies probably would have gone bankrupt. They would have gone under. The government was at least a little ahead of it to do something about it, but it could not have continued on, that was obvious.

Mr. Boudria: I have no further questions.

Mr. Chairman: Thank you, Mr. Boudria. Mr. Potter, Mr. Colhoun, Mr. Marchment, on behalf of the committee, thank for being here with us for the better part of the afternoon. We certainly did appreciate it.

Our committee is adjourned until Tuesday at 10 a.m.

The committee adjourned at 3:51 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 21, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Gillies
Pollock, J. (Hastings-Peterborough PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio
Villeneuve, N. (Stormont-Dundas-Glengarry PC) for Mr. Mitchell

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Ontario Mortgage Brokers Association:

Exton, L. R., President
Ezrin, P., Past President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 21, 1984

The committee met at 10:10 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Acting Chairman (Mr. Breithaupt): Ladies and gentlemen, we will call the committee to order so that we can proceed with the morning's work while members are arriving.

The chairman has several items to raise and I am sure he will do that when he arrives. The agenda is before you. This morning we have the Ontario Mortgage Brokers Association here, Mr. Leonard R. Exton, president, and Paul Ezrin, past president. Gentlemen, if you would like to come forward, we will be pleased to receive your presentation. Mr. Exton has been before us previously and we welcome him back. It is exhibit 48.

ONTARIO MORTGAGE BROKERS ASSOCIATION

Mr. Exton: Mr. Chairman and members, you have before you the brief which has been prepared by the Ontario Mortgage Brokers Association and I will do a little more than just read it. I think certain things in the brief require a little bit more background than we decided to put down on paper.

The Ontario Mortgage Brokers Association supports in principle the need to address problems that have arisen in recent years and supports any and all recommendations that enhance the integrity of the trust and loan industry and strengthen whatever protection is made available to the public.

The proposed provisions of the loan and trust corporation legislation and administration in Ontario include a recommendation that would prohibit registered mortgage brokers and their officers from serving as directors of loan and trust corporations. That is the reason we are here today.

That recommendation is, we submit, onerous on the basis that it discriminates against an entire industry without further consideration. It would be more productive, in our view, to deal with the problems so that the public is protected before these problems become entrenched.

The background of the mortgage brokers industry in Ontario accelerated in the early 1950s during a period of rapid economic growth in which the demand for mortgage financing surpassed the lending institutions' ability to service the need adequately. Restrictive legislation and an extremely conservative lending philosophy combined to make it difficult for a large segment of the borrowing public to secure mortgage funding. The lenders were

extremely restrictive on the types of loans, which created a gap in the marketplace that was filled by the emerging mortgage brokerage industry.

Mortgage brokers developed an innovative source of funds to fill this need by attracting a large pool of private investment funds into the marketplace and creating a new pool of funds through new commercial lending sources. Many lenders also changed their policy to concentrate on the mortgage lending field, which helped in filling the void. Such corporations as Canadian Acceptance Corp., Niagara Finance, Commercial Credit and even bank subsidiaries such as United Dominions went from consumer financing to mortgage lending in addition to their regular portfolios.

Certain abuses arose that were addressed by the legitimate brokers, with the result that in 1960, through the combined efforts of brokers and the Ontario government, the Mortgage Brokers Act was passed. The Ontario Mortgage Brokers Association had been previously established in 1960 to act as the liaison between the industry and government and to regulate the mortgage brokerage industry in Ontario.

The formation of our association and the passing of legislation helped rid the industry of many abuses, with the result that we have a reasonably well run, well regulated and mature industry providing a service in the best interests of the public.

The industry today consists of approximately 500 registered mortgage brokers in Ontario. About 140 of the largest and most active brokerages are members of the Ontario Mortgage Brokers Association. We estimate that approximately 75 per cent of the mortgage brokerage business done in Ontario is done through OMBA members.

Over the years the number of registered brokers in Ontario has varied from a high of 1,850 and OMBA membership from a peak of 300, depending on economic conditions from time to time. Currently 93 loan and trust companies are registered to do business in Ontario.

Although the volume of business done by the loan and trust industry far exceeds that of the brokerage industry, brokers play a vital part, generating a respectable volume of business through the loan and trust industry as well as to private investors.

The Ontario Mortgage Brokers Association has co-operated closely with the Ontario government to upgrade the industry through educational courses and is the sole source of education for the licensing of mortgage brokers in the province.

Experienced mortgage brokers have proved invaluable to established lenders, and many of them are on the boards of directors of trust companies. Further, the legislation developed in Ontario to regulate the industry here has become a model for legislation in British Columbia and Alberta.

Our comments and recommendations are as follows:

The Ontario Mortgage Brokers Association agrees with the need to clarify and toughen the conflict of interest rules and the standards of professionals involved in transactions where a conflict of interest may have an improper influence.

On the other hand, because of the continuing contribution the mortgage brokers have made to the lending community, it would in our view be counterproductive to prohibit mortgage brokers from acting as directors of loan or trust companies in the same way that lawyers, accountants and real estate brokers would be precluded from being directors as well. Lawyers, accountants and real estate brokers in many cases act as mortgage brokers, and real estate brokers are specifically deemed to be mortgage brokers under the Mortgage Brokers Act.

The association further recommends that any corrective legislation should not have the ultimate effect of stifling the competition that has been created in the mortgage lending industry over the past two decades, which has benefited the consumer in keeping interest rates competitive.

The OMBA is grateful to the committee for its interest and expresses its appreciation for the opportunity to be heard on this important matter.

Mr. T. P. Reid: Mr. Chairman, I guess the first question would be, can the deputy or Mr. Thompson give us the rationale for excluding these people from serving on boards of directors.

Mr. Crosbie: The basic concern we were trying to address here is the potential for conflict of interest between the trust company or loan corporation, which is a regulated operation--at least, the moneys that are invested there come under Canada Deposit Insurance Corp. coverage--and situations where individuals from mortgage brokerage firms would be involved who were not covered by the insurance. The thought here was to try to avoid the type of conflict that had developed, and I think the Astra/Re-Mor situation was a particularly bad example of it.

Mr. T. P. Reid: I am sorry, I really do not follow that.

Mr. Crosbie: The problem we were trying to avoid was the kind of situation in which people wear two hats. They attract people into a business wearing one hat and sell them a different product under the other hat. People come in thinking they are making an insured investment and they go out with a mortgage investment, which is not insured. It is a sort of bait-and-switch problem.

Mr. Breithaupt: But you do not necessarily have to be a mortgage broker to have participated in that experience.

Mr. Crosbie: No, that is true. There are a number of areas where this can happen, but we were trying to address situations where we thought they might arise.

10:20 a.m.

Mr. Breithaupt: If that was a particular problem, why would you not require that perhaps a mortgage broker director should not sit on an investment committee or a mortgage committee or that there should not be a majority of those persons on the committee? Perhaps if you had a regulation, if this were a particular problem, you would be dealing with the matter much more thoroughly than simply denying the opportunity to be a director at all.

Mr. Crosbie: I certainly have to agree that from some of the presentations we have heard to date there are alternatives to our recommendation. What I was anxious to hear is further comment on that sort of alternative.

Mr. Breithaupt: Perhaps Mr. Exton could speak to that point.

Mr. J. A. Taylor: Supplementary to that, I surmise that what you are trying to do is eliminate the potential for conflict of interest by excluding a certain class of professionals or persons from boards of directors. Would that be the sense of it?

Mr. Crosbie: Yes. That is not an unfair way of characterizing what was attempted here.

Mr. J. A. Taylor: This is a conflict of interest, I guess, as is historically a problem in many areas, whether it is in municipal government--we have had, as you know, many changes, studies, etc., in regard to municipal conflict of interest. Do you eliminate the person from running for office because there might be a potential? The way they address it is you declare a conflict of interest. You do not participate in discussion. You do not vote on matters.

It may be that we are going too far in terms of ensuring that a person's professionalism is not compromised because of his proximity to another area of interest. Thank you for permitting me to comment.

Mr. Crosbie: If I may say--just before we return to Mr. Exton's comments--one of the suggestions which has been made, of course, is that much of the problem that we have been concerned with in the past arises out of the physical integration of a mortgage broker's office with some others, a trust facility. People coming in the door do not really know with whom they are dealing. Maybe that is more of a problem than the actual persons behind the counter.

If there is some way that we could ensure that people knew that they have stopped dealing with a trust company and that their investment is no longer insured, and they are now dealing with a mortgage broker and their investment may not be insured--or probably not insured--that might be a more positive way of dealing with the problem and it avoids the difficulties that the members have identified here.

Mr. Breithaupt: Perhaps the view, Mr. Chairman, from Mr. Exton on the suggestion that, if necessary, some restrictions

would be placed on committee membership or committee majority controlled by persons who happen to be mortgage brokers, as a way of dealing with this problem that the deputy minister sets out--

Hon. Mr. Elgie: Potential problem.

Mr. Breithaupt: Potential problem, yes, to be accurate. Do you think that some restrictions or rules of operation with respect to the use of outside directors, or directors with other qualifications in some of these situations might avoid the problem of any conflict that could arise?

Mr. Exton: We are very concerned with the possible abuse by anyone in any position of trust, and we feel that excluding a complete class of professional--being members of the Ontario Mortgage Brokers Association or not--mortgage brokers, as a class, are being unfairly dealt with. What better person to serve on a trust and loan corporation than a mortgage broker?

When I first read the white paper, I was saying: "Would you prefer to have doctors, who have absolutely no experience? Would you prefer to have sanitary engineers?"

Mr. Breithaupt: There is a bad example if I ever heard one.

Interjection: They are all bad.

Hon. Mr. Elgie: Would you care to choose another word?

Mr. T. P. Reid: How about "politicians"?

Mr. Exton: I will go to the opposite end of the spectrum.

Interjection: I think you did.

Mr. Exton: Sanitary engineers, and I am being very nice, garbage men--

Mr. Boudria: I like the other example better.

Mr. Exton: You are saying they can be members and serve as directors on the board of directors of trust companies, but you are not allowing mortgage brokers to be. Where there is a potential conflict, I agree certain rules have to be put in which will reduce the potential for conflict, but not going against the specific class of professionals.

Mr. Breithaupt: I think you will have sensed from some of the comments made that a number of us agree that a class should not be discriminated against, but if there is this perceived problem, how else do you think we could address it? Would it be practical to have certain rules of internal committee operation overviewed by the ministry so there was not a majority of any one group on the investment committee, the mortgage committee or whatever? If there is this potential problem, could you help us come to some more practical way of sorting it out than denying a class the opportunity to be a director of a trust company?

Mr. Crosbie: Mr. Exton, before you answer that, could I remind you of your comments the other day? I think they would be helpful. They go right to the point with which we were concerned.

The basic difference between your example of a mortgage broker and a garbage collector or a doctor is that the mortgage broker has the capacity to redirect the investment into something to his own advantage. I recall when you were making the presentation on behalf of Seel Mortgage Investment Corp. you pointed out how on your board of directors you had the capacity to review loan applications and, if anybody on that board turned it down, it was gone.

Mr. Exton: That there was a veto power.

Mr. Crosbie: But you then pointed out that if your family in its other coat--presumably your mortgage brokerage capacity--thought it was a good investment, you would take it on personally and it would be placed. I see nothing wrong with that as long as the person who came in to make the original investment understands that is what is happening to his money.

Mr. Exton: I think there may be a little confusion. Seel Mortgage Investment Corp. is a publicly traded mortgage investment corporation so people who invest their money in Seel Mortgage Investment Corp. are buying shares in all its mortgages in--

Mr. Crosbie: That is a bad example in the sense of where your money comes from there. But the same thing could happen in a loan or trust company where you have a mortgage broker sitting as a director. If an investment comes in to the trust company which the trust company does not want to handle, the mortgage broker can say, "I will take it." If it is not clear to the investor that is what has happened to his money, he might suddenly find his investment is in a different company.

Mr. Ezrin: Are we talking in this case about the investor or the borrower, because it is really only the borrower who is affected?

Mr. Exton: The investor has not put his money anywhere yet, because there is a syndication agreement that has to be prepared once it goes from Seel Mortgage, which in this case we are talking about, over to Eric Exton in trust.

Mr. Crosbie: You may recall the mechanism that was used in Astra/Re-Mor. People invested in trust certificates or they came in and thought they were investing in some sort of guaranteed or insured investment. Then the company, through a series of paper transactions, transferred that money into the mortgage broker operation and many of the people did not understand that was what had happened.

Mr. Exton: Now you are talking, in the case of Seel Mortgage Investment Corp., of investors investing in debentures and then all of a sudden investing in a specific mortgage.

Mr. Crosbie: Yes.

Mr. Exton: That can never happen with us because they get a debenture certificate and they know it is with Seel Mortgage Investment Corp. If they are ever involved in an individual syndication mortgage, they also have a syndication agreement and they would not have a debenture.

Mr. Crosbie: I agree. If it is done properly, there is no problem. It is the capacity to redirect--

Mr. Exton: I am not talking about our way. With Astra/Re-Mor, that is something the government has gone through many times and found an answer by being a little more firm in the way it monitors trust and loan companies.

10:30 a.m.

What you are asking me for is how, on the board of directors, you can avoid the conflict of interest with mortgage brokers. I have already described to you the way we have done it in our office. There is no real use in going over it again, but that is one of the ideas we have used internally and we have never been forced to by the government. It is an internal procedure to avoid the conflict of interest that could exist. It is not enough to appear to be honest, you must be honest. It is something we have done on our own. Perhaps that is the type of thing you want to bring forth in your recommendations.

Mr. J. A. Taylor: On a point of order: Mr. Exton was asked to respond to a question put by Mr. Breithaupt, which he may have to repeat because of all of the interjections in the meantime. Some of us are not clear now as to what that question was.

While he is preparing the question again, I would suggest he address the other element of this, that in addition to excluding a class of person, there may be excluded a professional opinion or expertise which might be valuable in terms of a group making the decision as to whether or not that mortgage should be approved. In other words, the resulting judgement may not be as good because you have excluded an area of expertise by excluding a class of professionals. I leave it to Mr. Breithaupt to restate his question so we can all understand what the question was and what the answer is.

Mr. Breithaupt: Rather than avoiding our potential problem by simply wiping out a class of persons who could be directors--and I think you have gathered that committee members likely do not favour that rather draconian step--could you give us any suggestions as to how this potential conflict of the person wearing both hats, as Mr. Crosbie has phrased it, could be dealt with? Is it possible to have rules to deal with certain majority membership on investment or administrative committees whereby others would be in the majority compared with mortgage brokers as such?

In most of the smaller trust companies in particular, I presume many of them have come from the mortgage broker tradition

and have that financial background and expertise. You certainly would want to keep the opportunity for those persons who are knowledgeable to be involved, but perhaps there has to be some balancing because of the potential conflict of interest. How could you help us come up with a fair tradeoff in this area?

Mr. Exton: Just like a lock is only good for honest people, so too are recommendations you will come out with on how to avoid potential conflicts. A question like that obviously requires a good deal of thought. I do not think I am prepared to give any recommendations other than what I have lived with over the past number of years in what our mortgage and investment corporation does, and that is veto power which, I say again, is an unwritten rule we follow.

Anything else would have to be deferred. I will do my utmost to come up with something and give it to the members here to consider.

Mr. Cassidy: I have several questions. Obviously, right across the spectrum there is a questioning of why mortgage brokers should be picked out specifically. On the other hand, there is an aspect that some people in your trade are discounting mortgages and charging fabulous interest rates to people who are induced to take them or feel they are so desperate they have no other choice. There are parts of the business which, in the past, were somewhat unsavoury. I do not know whether that is partly what you are labouring under in terms of being picked out for this particular distinction, as opposed to accountants and real estate brokers and so on.

What is the nature of the mortgage brokers business? How much of it is dealing with people coming and looking for mortgages and how much of it is actually developing sources to provide the loans? Do you mainly serve as middle men in terms of providing money between private lenders and private borrowers, or do you serve as a conduit for private borrowers to give them access to institutional funds of one sort or another?

Mr. Exton: I will defer that question to Paul Ezrin.

Mr. Ezrin: We act in all those capacities. Normally, a mortgage broker is acting with a large number of private investors. Our firm has 500 or 600 private investors we place mortgages with. In addition to that, we place those deals that fit various trust companies. We will fund them at the best possible rates with those companies that are competitive at that moment in the marketplace. We are placing deals both conventionally and privately. In my company it is split about 50:50. We act in both areas and normally we look for whatever the best deal will be for the particular borrower coming into our office.

Mr. Cassidy: How do you make your money? If you place a mortgage with a trust company, do you charge the borrower a fee for your services, or do you get a discount or some kind of commission from the lender?

Mr. Ezrin: It depends on the situation. If we are earning a fee, we then tell the borrower we are earning X number of dollars, or earning a certain fee out of this transaction, and because of that we are not going to charge them anything. When we are not earning a fee, then we will charge the borrower directly in regard to the difficulty of a particular mortgage.

Mr. Cassidy: What would a typical fee be?

Mr. Ezrin: In our firm we average about \$450 per mortgage. That includes both residential and commercial mortgages. The residential area might average about \$300 and the commercial might average close to \$1,000.

Mr. Cassidy: Where you have private money coming in, these would be mortgages that are hard to place through the institutional channels. Is that correct?

Mr. Ezrin: Sometimes they are hard to place; sometimes the private market may be more reasonable about what they require as far as rates are concerned or more flexible in open privileges. You do not have to match funds up the same way a trust company does. We do whatever works out as most advantageous for the borrower.

Mr. Cassidy: I realize you cannot speak for all firms, but does most of your lending in your firm through these private placements tend to be generally within the range of interest rates that are being charged for mortgages by the institutions or substantially above?

Mr. Ezrin: It tends to run from slightly below to, in the more difficult deals, quite a bit above. We may do some deals with people refinancing and going up to 90 per cent of value and they cannot prove income, etc. They may pay a rate two or three per cent above the normal marketplace rate to be able to obtain that type of financing, especially if it is not available from the trust or finance companies that specialize in that area. If we have to go beyond that, then the rates tend to be higher.

Mr. Cassidy: In order to qualify as a mortgage broker, I gather you do not have to have any professional qualifications? Is that correct?

Mr. Ezrin: Basically, you have to pass a course of study the Ontario Mortgage Brokers Association sponsors in conjunction with the provincial government. You write an exam, and then the provincial government steps in and checks out the individual and approves him as a mortgage broker. It has now become a situation where there is a gap of several months from the time people apply until they actually get approval. I understand they are very well checked out.

Mr. Cassidy: I gather from the figures here that most mortgage brokers are not members of your association. Is that right?

Mr. Ezrin: Many of the mortgage brokers run fairly small operations. Some of them do it part-time and they may only do 15 or 20 mortgages a year. They cannot earn a full living from that, so they are involved in some other business in addition to that. Ninety per cent or more of the ones who are members of our association are full-time mortgage brokers. We do over 75 per cent of the mortgages done by mortgage brokers in the province.

Mr. T. P. Reid: But everybody is licensed?

10:40 a.m.

Mr. Ezrin: Other than a couple on the periphery. From time to time there are a few wandering around who call themselves financial consultants. They are slowly but surely being knocked out of the business, but there are a few of those still at the periphery.

Mr. Breithaupt: Everyone who is licensed is a member of your association?

Mr. Ezrin: That is correct.

Mr. Cassidy: To take a hypothetical example, if my uncle happens to hear that a distant relative needs a mortgage and finds someone to get it for him--

Mr. T. P. Reid: They will avoid him like the plague.

Hon. Mr. Elgie: No. His family were Conservatives. He is the black sheep.

Mr. T. P. Reid: A relative in need is a relative to avoid.

Mr. Cassidy: With something like that, where it gets from being close family, which is okay, to extended family, to sort of friends of friends, where is the dividing line?

Mr. Ezrin: Basically, it is someone who holds himself out to be a mortgage broker.

Mr. Cassidy: I see.

Mr. Ezrin: He could be a trader in mortgages, but if he buys for his own account, he is not a mortgage broker; he is a mortgage investor. He is active as a mortgage broker if he trades in mortgages--that is, he starts working with a person at one end who requires the money and places the mortgage with a second party whom he has found to deal with.

Mr. Cassidy: When you serve as an intermediary, does the mortgage broker ever actually hold the funds, or is the role basically to put the two sides together?

Mr. Ezrin: A true broker will put the two sides together. Some of our lawyers may hold funds in some cases, but it is not a common situation in the industry.

Mr. Cassidy: When a lawyer arranges a mortgage for somebody, does he have to be a mortgage broker?

Mr. Ezrin: There are some technical points there. Some are registered as mortgage brokers. I would think they should be registered if they are actively involved in it. There are some lawyers who may do a limited number of mortgages per year. I think the general guideline number is six. If they do less than six, they do not have to be registered. If they do more, they really should be registered.

Mr. Cassidy: So if it is purely incidental to their practice it is okay. Is that right?

Mr. Ezrin: That is right.

Mr. Cassidy: Is it your impression that some lawyers, without representing themselves as being in the business, are still a good deal more active than that, without being licensed?

Mr. Ezrin: I am sure there are some around like that.

Mr. Cassidy: What is the situation with regard to accountants or real estate brokers?

Mr. Ezrin: Accountants tend to work in the area of commercial mortgages and some work in the area of syndication. They are not normally in the residential sphere. There are a number of firms that specialize in doing commercial mortgages. Some accounting firms actually have gone out of the accounting business and are basically doing nothing but syndications.

In the case of real estate brokers, some act both as real estate brokers and mortgage brokers. But the businesses have tended to get more specialized over the last few years and the most successful mortgage brokers are ones who do nothing but mortgage brokerage.

Mr. Cassidy: But does a real estate broker have to become licensed as a mortgage broker to do mortgage brokerage business?

Mr. Ezrin: No. He is automatically licensed as a mortgage broker under the terms of the act.

Mr. Cassidy: I believe there are about 12,000 real estate brokers who are licensed in the province. Is that correct? Or is that real estate salesmen?

Mr. Ezrin: I think that is sales people.

Mr. Cassidy: So is it a sales person or a real estate broker?

Mr. Ezrin: A broker, not the salesman. The broker is the person who is licensed. I would guess there are about 3,000 real estate brokers in Ontario, based on the number of--

Mr. Cassidy: I think this is unlikely now, but where the white paper proposes to be implemented, everybody in your trade would find a way of decertifying as a mortgage broker and becoming a real estate broker and then keep on in the business. Is that right?

Mr. Ezrin: Theoretically, that would be correct.

Mr. Cassidy: Or at least the people who were directly affected.

Mr. Ezrin: Yes.

Mr. Cassidy: Does an accountant have to become licensed as a mortgage broker to do the kind of commercial mortgage business you talk about?

Mr. Ezrin: Yes, if he is doing it in any sort of quantity.

Mr. Cassidy: So accountants and lawyers can do it on an incidental basis but not as a major part of their business without being licensed.

Mr. Ezrin: Correct.

Mr. Cassidy: But real estate brokers are automatically licensed.

Mr. Ezrin: Correct.

Mr. Cassidy: I see.

You know the Astra/Re-Mor story. Whatever the rights or wrongs of the close relation between mortgage brokers and so on are concerned, there were also a few regulatory problems there. For example, one part of government was not talking to another part. It is possible you are being asked to carry some of the can for that because governments, traditionally, do not like to take responsibility themselves.

Perhaps I could ask--

Mr. T. P. Reid: Of any political stripe.

Mr. Cassidy: Of any political stripe? I am not sure about that. Give us a chance, Pat.

Mr. J. A. Taylor: Is that a confession I hear?

Mr. Cassidy: Coming back to that question of possible confusion from having two shingles on one shop, is it there that some regulatory interference may be justifiable or that you could see it working in such a way? Is it normal for mortgage brokers to be working out of the same shop as a trust or loan company, for example?

Mr. Ezrin: It is not normal; it does happen and the Astra/Re-Mor situation would be an example of where it does happen. I would suggest that, especially if the names are the same or they are similar, it is almost an impossible situation. There should be very strong legislation regarding no similarity in name between the mortgage brokerage and the trust company.

Mr. Cassidy: Could you give me examples of names which have been very similar?

Mr. Ezrin: I cannot think of any off the top of my head. Actually, an example might be in the Greymac area. They did have several companies or trusts and they did have a mortgage brokerage operation which was a holding company, although it was not used that way to cause a problem, but it could have been used that way.

Mr. Cassidy: Certainly for the untutored public, they would have had some difficulty in distinguishing between them.

Mr. Ezrin: Correct. They did have a problem, although it may be something the public is not aware of, where they did have a syndicating arm. They did not mix the funds, but it could have been a problem if people thought the mortgage that was being syndicated was, in reality, a guaranteed investment certificate. It could have caused a terrible problem.

The Acting Chairman (Mr. MacQuarrie): I notice on your letterhead that one of your officers is with Fidelity Financial Services and I understand there is also a Fidelity Trust.

Mr. Ezrin: There is no connection whatsoever, but that would be a perfect example of one. I guess the provincial government, in its wisdom, approved the name some time down the line and possibly even before Fidelity came into Ontario, because this name has been around for maybe 20 years. Fidelity was not in Ontario until about 10 years ago. That is an example of where it could be a problem.

Mr. Cassidy: Suppose the regulations effectively lifted the ban on the mortgage brokers being involved on the boards of trust companies. I gather you have a number of people who are in that situation now. Is that right?

Mr. Ezrin: Correct.

Mr. Cassidy: Do you know how many?

Mr. Ezrin: I would guess, within our association, most likely there are at least 10.

Mr. Cassidy: So it is not a large number.

Mr. Ezrin: But remember that there are only so many trust companies licensed in Ontario and this represents a great number of the small ones.

Mr. Cassidy: Right. Do other mortgage brokers actually find their way into trust companies as employees and work there?

Mr. Ezrin: They would no longer be acting as mortgage brokers if they were within the trust company. They would basically be changing a function from working as a mortgage broker, then changing their hat and going as an employee of a trust company. Normally, they are not doing both of those functions at the same time.

Mr. Breithaupt: Do they keep their qualification and membership?

Mr. Ezrin: Some of them do, yes.

Mr. Cassidy: It is not an illogical move, particularly where somebody gets into the business and finds he cannot quite make it because he is a bit young and green. They will learn the business and then use those skills within a trust company.

Mr. Ezrin: Yes. It is quite common to have people moving back and forth. A broker may find he likes a salary every week as opposed to a commission and he goes to work for a trust company on a salary basis. It is not uncommon. It happens 10 or 20 times a year, back and forth.

Mr. Cassidy: Would you be open as an association to regulations that get quite tough about the two-shingle shop in order to ensure that people cannot walk into a trust company and find that they are dealing with a mortgage broker?

10:50 a.m.

Mr. Ezrin: Once again it gets into a technical point, but there are operations which are not that big as trust companies. It becomes fairly punitive, cost-wise, for a trust company and a mortgage broker, both of which may employ only five people between them, to start two separate offices, with rents, extra secretarial help and all the rest. Maybe the identification has to be done in the name area first, and possibly if something else has to be done internally within the ministry to make sure these things are audited properly so these things do not happen.

The Astra/Re-Mor thing was almost a self-evident case. Everyone around the industry knew these things were going on.

Mr. Cassidy: Everyone except these guys.

Mr. Ezrin: I think the registrar of mortgage brokers lifted the guy's licence, if I am not mistaken, and the other departments were not aware of it.

Mr. Cassidy: Perhaps I could ask--

The Acting Chairman (Mr. MacQuarrie): Mr. Cassidy, there are a number of others.

Mr. Cassidy: I will ask one final question and then I will be still.

The Acting Chairman: Could you speed up your line of questioning?

Mr. Cassidy: I have been asking questions very quickly.

Mr. J. A. Taylor: Sure he has. Do not be too hard on Mr. Cassidy.

Mr. Cassidy: Jim and I and the president of the Canadian Bankers' Association are very closely allied on these things.

Hon. Mr. Elgie: In bed with the bankers.

Mr. Boudria: Corporate welfare chums again.

Mr. Cassidy: Perhaps I can ask this: when Seaway began its rapid expansion, one of the ways it expanded was by the use of a very wide network of agents or representatives. As I understand it, basically that was a device for collecting deposits that had not been used in the industry extensively before. Is that correct?

Mr. Ezrin: Seaway embellished the normal method of doing it; they expanded it beyond what had been done in the past. It was not uncommon. It is just that because Seaway was looking for so much money so quickly, and the normal sources were not necessarily readily available, it set up this mass network which brought in large sums of money very quickly.

Mr. Cassidy: The company was quite aggressive about it. Do you mean this would be done in servicing very small communities and accepting deposits by other trust companies, or that it was done but only rarely before by trust companies?

Mr. Ezrin: I do not understand that.

Mr. Exton: Mr. Cassidy, you are alluding to the fact that Seaway, because of its rapid expansion, was always the highest in interest rates to the public. This was seen at least a year, if not two years, before the government actually stepped in. The Money Reporter always showed Seaway and Greymac as being the highest, and it cost us. If we wanted funds for the same period as they did, if they were three years at 11 per cent when everybody else was at 10.25, we would have to compete against Greymac and Seaway.

I think with what you are saying about a wide range of people who go out and attract funds for them, other trust companies use the same methods but because of the way in which they go about getting the business and their not-so-rapid expansion, Seaway and Greymac could get the funds by being even 10/100ths of a point higher than their competitors.

Right now we are looking for three-year money, 35-month money. Counsel Trust Co. happens to be at 11.25. They obviously need funds. They have a mortgage probably at 13.25 for a

three-year term. We have a mortgage out at 12.75. We are looking for funds; 11.25 may be a little high for us, but in order for us to attract funds and profitably match our assets and liabilities for that particular mortgage, we are looking for funds and we have to go out and get 11.25. If Seaway and Greymac were still here, they would be asking 11.75, because they would need the funds so desperately.

The use of agents to sell debentures is not in itself an unusual occurrence.

Mr. Cassidy: I do not find anything particularly objectionable in it per se. I think it was just another way of collecting funds. What I wondered though, is there a potential conflict there? Do mortgage brokers often serve as agents in collecting funds for trust companies?

Mr. Ezrin: Some of them do. I do not think they earn a very large percentage of their income. I would say we earn about one-quarter of one per cent of our gross income in our operation from that type of fee. It is basically just a service to our clients who require it.

Mr. Exton: I think the question you are trying to get at is, where a mortgage broker and a trust company are in the same office, does the mortgage broker go out and attract funds for the trust company? I would say the answer is no. Do they get a fee for attracting such funds? The answer is definitely no.

Mr. Cassidy: Just to conclude, I would like to think a bit more about what you say about a small trust company and a mortgage broker operation working under the same shop.

I have some problems with that, because the nature of the two businesses is fairly substantially different and, as I understand it, your mortgage investments that work through your business would be basically uninsured, whereas the deposits with trust companies would be essentially, for most people, insured. Is that correct?

Mr. Exton: Yes.

Mr. Cassidy: I am not happy about that.

Mr. Exton: Where you have a debenture certificate or guaranteed investment certificate, depending on whether you are with a trust and loan company or a mortgage investment corporation, depending on what they are calling it, and when you invest in a specific mortgage, nowhere on the mortgage document is there any allusion to the fact that it is a guaranteed investment certificate or a guaranteed return.

Maybe this is the same way as when you prepare a prospectus. There is a note on the front page of the prospectus, "This prospectus is" and they go on to say that there is no guarantee as to the marketability of shares that are offered hereunder, and so on. Maybe that is the type of thing you have to put on the front page and have a cover page on a mortgage agreement where there is

this indication, where the person is investing in a mortgage document, rather than in a guaranteed certificate.

Mr. Ezrin: It is only the very unsophisticated who get caught in that net, because anyone who normally invests in mortgages knows that he gets a mortgage in his name or a portion of a mortgage in his name. He recognizes the difference between a mortgage and guaranteed investment certificate.

Mr. Cassidy: Once he gets a portion, though, he is putting his money into a pot.

Mr. Ezrin: As long as he is getting something in his name with a particular part of any mortgage or, in some cases, shares of a company, there is quite a difference between that and a guaranteed investment certificate with a specific term and a specific rate on it.

The Acting Chairman: I might mention at this point that today Mr. Hodgson is substituting for Mr. Gillies; Mr. Villeneuve for Mr. Mitchell; Mr. Pollock for Mr. Kolyn.

Mr. Hodgson: Mr. Chairman, my question about the real estate broker had been answered. Mr. Cassidy asked that question. What about the other two types of people out there arranging mortgages for the consumer? We covered the real estate agent. Then you have the salesmen for development companies saying that if I want to buy a home from them, they will arrange the mortgage at a certain percentage. What qualification do those salesmen have to arrange mortgages for the consumer?

Mr. Ezrin: They really do not have any qualifications. They are not charging a fee for services. They are just arranging it basically as a service to the client.

Mr. Hodgson: Who knows whether they are charging a fee for services or not, when it is all built into the price of the house?

Mr. Breithaupt: Or that they receive a payment back.

Mr. Hodgson: --consumer got, prospective buyer for a home, especially from a development company--which we have in our area, a big developer, 700 to 800 homes--arranged a mortgage at a certain percentage. Now a salesman on the lot who says he will arrange that--

Mr. Ezrin: He does not. I do not really know what that has to do with mortgage brokers not being allowed to serve as directors of trust companies. I do not mind answering the question, but I do not know what that has to do with what we came for.

Hon. Mr. Elgie: Once you are here, you are in for everything. You have to understand the rules of the game.

Mr. Ezrin: That is okay. I will answer whatever

questions you throw at me, but I do not know what it has to do with--

Mr. Breithaupt: The only rule is there are no rules.

Mr. Ezrin: Basically, the person who has arranged that mortgage is not holding himself up to be a mortgage broker, so by definition he is not a mortgage broker. I would guess, if you wanted to regulate them in some way, shape or form, they could be licensed, but it would most likely be extremely difficult. All they are really doing is taking applications and normally working within the corporate environment, taking that application based on whatever particular lending institution is doing the mortgages for that subdivision. They are just sending that application on to that lending institution.

11 a.m.

The only time they would really be acting as a mortgage broker would be if it was turned down by that institution and then, in most cases, the people would not know what to do and they would call a mortgage broker in to take care of the problem.

Mr. Hodgson: So these people who are arranging have no qualifications?

Mr. Ezrin: No.

Mr. T. P. Reid: Mr. Cassidy pretty well covered the waterfront. I am not clear why you would have a mortgage broker and a small trust and loan company in the same operation. Is it simply one of economics? Presumably you could have a mortgage broker and a dressmaker side by side, except that--

Mr. Ezrin: Actually there is more logic to it than that. Normally the reasons are as follows.

A mortgage broker will get in a large number of mortgage applications. Some of those will fit that trust company; others will not fit at all because they do not meet the requirements of the act, but they can be placed privately with various investors who want that kind of mortgage. There may be mortgages that are beyond the legal capacity of that company to accept; they then go and take a part for the trust company and maybe syndicate a part each against three or four other small trust companies. Or the whole thing may be done privately with a group of investors.

Mr. T. P. Reid: Are we talking about the same physical premises, where you walk in one door and they are both there?

Mr. Ezrin: Yes.

Mr. Cassidy: Can you give us examples of firms like that?

Mr. Exton: I was here earlier in the week, and Seel Enterprises Ltd. and Seel Mortgage Investment Corp. are an exact example. Seel Enterprises Ltd. is the adviser to Seel Mortgage Investment Corp. All the employees are employees of Seel

Enterprises Ltd.; there are no employees of Seel Mortgage Investment Corp.

However, if you go through the same steps I went through last week, you need someone to oversee the operation, a president, someone who can find the mortgages for you, someone to do the accounting, someone to do the computer input; you need desks and space; you need a controller, someone who is the treasurer or chief operating officer of the company.

All these expenses are too much for a small trust company to handle at the outset; they just could not survive without both companies being together.

If after they grow to a particular value and they are making a certain amount of money, and if the physical aspect, as far as you are concerned, is a problem, I do not agree with it, but at that point you are saying they should have separate offices.

Mr. T. P. Reid: I did not say that. I have not come to that conclusion yet.

Mr. Exton: No, but you are concerned about the physical being of two people--

Mr. T. P. Reid: Two entities.

Mr. Exton: --two entities together.

Mr. Ezrin: I will give you a few examples, running through the list in the white paper, of ones that do operate in both spheres. Western Capital Trust is one I am aware of, as well as Marcil Trust and Income Trust. Those are a few off the top of my head. There are at least seven or eight, I think, among the trust companies listed. Most of them are federal ones, by the way.

Hon. Mr. Elgie: If I could just point out, Mr. Exton's company, though, is a particular creature of a section of the statute, and presumably your operation exists because of that statutory portion of the federal act, which created it for a deliberate purpose. So in your case you are not talking about trust companies in general, you are talking about a statutory creation that was allowed for the tax benefits and because of the benefit to the public, which was seeking mortgages at a time of high housing costs.

Interjection: Residential areas.

Mr. T. P. Reid: It is a thorny problem. In your experience do you have people coming in, and is there confusion in their minds?

Mr. Exton: Never.

Mr. Breithaupt: Never confusion, that is. People do come in.

Mr. Ezrin: Confusion occurs only when someone wants to confuse, as in the case of Astra/Re-Mor.

Mr. T. P. Reid: If there is a physical separation in which you say, "All right, you have to have an office across the street or one floor down," if somebody wants to do it, the actual physical separation is not going to stop them, obviously, from doing it.

Mr. Ezrin: I think some of Astra/Re-Mor was physically separated. It did not make any difference; they just took the money from one and put it in the other.

Mr. Exton: It is very easy to walk downstairs with a cheque and say: "Some guy came into the office wanting a debenture. Let us put it into this mortgage and we will call it a day." It does not happen that way.

Hon. Mr. Elgie: First, I think it is becoming apparent, especially after the presentation last week, that we do have to rethink that portion, because mortgage brokers have indeed achieved a professional reputation and provide a service that is important to the community. You are continually trying to upgrade your professional status and we are having conversations with your educational branch now. I think your comment about singling out a class of persons is one we do have to rethink.

There are two issues I want to talk to you about. One is the issue Mr. Cassidy and Mr. Reid and others have referred to. Without going into it further, the thing we are going to have to wrestle with, really, is people coming into an institution and being left with the impression that the money they have left there is in some way insured, whether it is in the same institution or different rooms or different buildings, as long as there is any overall umbrella which joins the two together.

The second part of it I would particularly like your comments on. That is the role of anyone sitting on a board of directors, whether mortgage brokers or others, who benefits in some way from influencing the direction of business to him or her or his or her firm as a result of his role as a director or member of an investment committee or other committee in that company. That is really the issue we were trying to address in that particular comment.

I understand what you are saying, that it sweeps in many people who are valuable to trust companies. It sweeps in accountants and lawyers and real estate people and so forth.

Regardless of whom it might sweep in, the problem is still there and it is a problem. You do not want the public to have the perception that there are people benefiting from a conflict, because it is not good for your industry either to have that happen.

All we would like to know is, in particular, do you have any thoughts on this role of a director who may benefit, directly or indirectly, by a referral of business and in which, in that

reference, he or she has some say? That is the difficult area.

Mr. Exton: First and foremost, there is a fiduciary responsibility on all directors. I remember the case of some bank directors who knew of something that was going to happen with their stock. They made a number of phone calls and bought some stock prior to the move that was supposed to take place. They made a fortune and it was found out. This is hundreds of thousands of dollars you are talking about.

The Ontario Securities Commission has certain rules and regulations and, again, they are only for the honest. In my opinion, it does not matter what controls are actually put on, except not having any directors at all, which obviously is not in your mind to begin with.

Regardless of what constraints are put on--and the constraint of a mortgage broker not being able to act as a director is one of those constraints which I think, as you have said, has to be rethought--there is nothing that can be done, that I can see, other than putting in certain safeguards that would prevent that, because anyone who is honest is going to abide by those rules; anyone who is dishonest is not.

There are laws against killing people; people still go out and kill people. There are laws against rape; people still go out and rape. There is only so much you can do without being so onerous and punitive with this problem.

Mr. Ezrin: The veto power on a board is most likely the best way of handling it, giving everyone on the investment committee the ability to veto a deal. That, in conjunction with your situation where you are going to require directors who leave a company to give their reasons for leaving, will be self-policing.

Mr. Cassidy: Can you explain that some more? That means, if there are four people on an investment committee--

Mr. Exton: Any one of them can turn down the deal and that deal is then turned down.

Mr. Cassidy: At least two of them, or 50 per cent of them, would have to be outside directors, is that right?

Mr. Ezrin: That is correct.

Mr. Cassidy: That smacks of socialism to me.

11:10 a.m.

Hon. Mr. Elgie: Everything smacks of socialism to you. Even your bathroom is--

Mr. Cassidy: That is because you guys are socialists deep down.

Is that part of the articles of certain lending institutions you are aware of?

Mr. Ezrin: Actually, interestingly enough, it may not be part of the articles, but I know in some of the large trust companies, when they have a committee of three people, if any one of the three people on the committee turns a deal down, it is turned down. It does not have to be a majority, just one of the three. They have found the same principle works very effectively. The other two have to persuade the third person it is a good deal; otherwise, it is turned down.

Mr. Cassidy: In the case of Seaway and Greymac and Crown, had that been applied there probably would have been swift action to take the recalcitrant individual off that committee.

Mr. Ezrin: But when that individual is removed as a director or decides to remove himself as a director, he is required to give the minister his reasons for stepping down.

Mr. Cassidy: Publicly or privately?

Mr. Ezrin: It can be done either way, as long as he gives his reasons. If he says, "They are approving all kinds of deals I am not willing to get involved in and I do not want to be a director under these circumstances," the minister is going to step in very quickly to find out what are the problems and why he is doing it.

Mr. Breithaupt: Except if he said his health is not of the best and he has just decided to quit.

Mr. Exton: If that happens often in the same trust company--

Mr. Ezrin: If you have a lot of sick people, you know there is something wrong.

The Acting Chairman (Mr. MacQuarrie): I wonder if I could direct a couple of questions to the witnesses.

Hon. Mr. Elgie: I would like to comment on that resignation point you raised. If one does give a director that authority to advise the registrar of why he is resigning, whether it is public or not, he also has to receive, obviously, some type of immunity from prosecution too.

Mr. Ezrin: We are assuming most of these people would step down before they got themselves into a situation where they have to have immunity from prosecution. That could be part of it, I guess, to make people--

Mr. Cassidy: The minister may also mean immunity in the sense of libel suits.

Hon. Mr. Elgie: Yes.

Mr. Ezrin: I see. I am sorry, excuse me.

Mr. Cassidy: I think there is a real problem in terms of

the responsibility of directors, certainly in the case of the various companies. There were all kinds of eminent Tories and crypto-Tories connected with the three companies that have been most particularly our concern.

Hon. Mr. Elgie: We will not talk about the Liberals. You can relax.

Mr. T. P. Reid: We have not talked about the three companies at all.

Mr. Cassidy: When you look at the Morrison report, somehow these guys were too busy. They had to be in the Bahamas, they had this going and that going. To hear you, they were ignorant about what was going on. If they were ignorant, they were not doing the job. If they knew what was going on, they were not doing the job either.

Mr. Ezrin: I do not know that everything was taken to the board that should have been taken to the board in the case of Greymac.

The Acting Chairman: I think you could take that more as a statement than a question.

Hon. Mr. Elgie: You could take it with a grain of salt, I think, yes.

Mr. Cassidy: It raises a problem. I think your view is a very interesting one. It goes to the question of whether directors are going to do the job or simply receive a fee for decorating the board. Too often, it has been the latter.

Mr. Ezrin: You might spell out more clearly what a director's responsibility within a trust company's sphere is. If people are going to take on that responsibility, they will know exactly, if they do not adhere to it, they are subject to criminal prosecution themselves.

The Acting Chairman: If I could get back to the two questions I have indicated I would like to raise with you, one of the main thrusts of the white paper is investor protection. In terms of placing mortgages or arranging mortgages as a mortgage broker, what proportion of those would be insured, say, with Mortgage Insurance Co. of Canada or some similar mortgage insurance?

Mr. Ezrin: In the case of our company, about 10 per cent of the deals we do are insured mortgages.

The Acting Chairman: Where you are into a very speculative, high-risk, high-ratio type of mortgage, do you advise the investor of the degree of risk and say, "For all intents and purposes picking up this paper is like being a Mississippi gambler"?

Mr. Ezrin: It is the old story. You have to match a particular mortgage with a particular investor. We have some

sophisticated investors who are willing to take high-risk mortgages, but the yields have to be particularly high to compensate them for the additional risk.

Some are very sophisticated and do very well with that type of portfolio. Others are not as successful and we find out a year or two later that they say to us: "We are going to go back to the more conservative mortgage. We have had our fill of problem situations." There are all kinds of investors around, some who want deals that are safer than trust companies take--we are talking about private investors--and the other end of the sphere who want the highest yields available in the marketplace.

The Acting Chairman: But I assume you gauge the investor and offer advice.

Mr. Ezrin: Yes. A good mortgage broker, if he wants to do business with that investor again, must fit the particular type of mortgage to the particular type of investor. If he does not do that, he is not going to be around in business long because nobody is going to want to talk to him.

Mr. Exton: Your question alludes to what Mr. Elgie was saying; that is, how do you protect the person coming into an office where there are dual companies in one physical area from--

The Acting Chairman: Mine was a simpler question. How do you protect a person from--

Mr. Exton: My feeling is that if it is a debenture, it is written on the top of the debenture certificate that this is a debenture with a guaranteed return of so much, insured by Canada Deposit Insurance Corp. up to \$60,000 principal only, or a combination of principal and interest combined to \$60,000.

When you walk in and are getting participation in a mortgage where the mortgage is in your own name because you are taking 100 per cent of it, on the front sheet it says: "This document is not a guaranteed investment certificate or a debenture. Your interest rate is so much but there is no guarantee as to its repayability," if you want to call it that. That is a way of protecting even the most unsophisticated investors.

Anybody can see it is not a guaranteed investment certificate. There is no guarantee as to repayment. The risk is all yours. Inside you get all the details of what the mortgage is all about--the security, the interest rate and the period of time the funds are out for. Everything you have to know about the document itself is inside. The warning is on the front just like on a pack of cigarettes.

The Acting Chairman: I was thinking of the typical investor I have encountered from time to time, the person with a limited amount of savings. He wants to derive some income from it. He has heard mortgages are a good investment so he goes into the office not knowing, really, what a mortgage is except that he has heard it is a good investment.

Mr. Exton: Excuse me. Certain people have called me on the phone and told me they have \$5,000. I said: "Is that all the excess money you have? Is this your life savings?" They said, "Yes." I said: "Do not put it in mortgages. Put it into a guaranteed investment certificate with another company or put it into a debenture with our company where you are insured by the Canada Deposit Insurance Corp. I would not risk the \$5,000 with something that is not guaranteed."

I myself have said: "Do not invest your money in a syndicated mortgage. The risks are too high. Rather have a debenture with Seel Mortgage where the risk is nonexistent as long as the government of Ontario stays solvent--sorry, if CDIC stays solvent."

The Acting Chairman: Is this approach typical of all mortgage brokers?

Mr. Exton: I cannot say what other mortgage brokers do.

The Acting Chairman: I have one other question I will take up later. Mr. Renwick and Mr. Boudria have indicated they have questions.

Mr. Renwick: I have two short ones. I do not intend to go on to the question of whether mortgage brokers should or should not be excluded from boards of trust companies. It would take a lot more persuasion than I have heard up until now to agree to that kind of exclusion. I think that is a totally wrong road to go on.

11:20 a.m.

There are two areas about which I would be interested in your comments and in the minister's comments. Is it possible the time has come for your association to evolve, if that is the right term, into a self-governing body with mandatory membership as a response to the method which has developed over time? Would that go some way towards imposing the kind of internal discipline that would meet some of the problems and at the same time get away from the tendency of the Conservative government to over-regulate it?

Mr. Exton: I am not going to go against the Conservative government. I think they have done a good job in doing what they have done. However, in answer to your question--

Mr. T. P. Reid: You have not heard of Greymac, Astra/Re-Mor or those things?

Mr. Exton: In answer to your question, the answer is a definite yes. The ability of the Ontario Mortgage Brokers Association to survive with only 140 members has at times been difficult. With 300 we were able to do what we had to. We were a voice for all the mortgage brokers who were members. At that time, if the figures we are using in our brief are correct, and I think they are, there were 1,800 mortgage brokers, of which 300, or one sixth, were members. Now there are 500 and we have 140 members. The ratio has changed somewhat.

In answer to your question, what we have always tried to do is to make it mandatory for all mortgage brokers to be under the umbrella of the Ontario Mortgage Brokers Association, be self-policing with our ethics committee and have the input of the registrar and the assistant registrar to help us in cases where we do not have the ability to act, even if it means revocation of licence.

Your idea is very warmly accepted and we would like to have that tack if possible, so that every person who comes out of our education course must, if he wants to become a mortgage broker, join the association. It makes it a stronger association and it makes it a force to be reckoned with.

Mr. T. P. Reid: With disciplinary problems.

Mr. Exton: With disciplinary problems.

Mr. Ezrin: It could be self-policing. Right now we cannot police most of the mortgage brokers because they are not members of our association.

Mr. Breithaupt: About one third are.

Mr. Exton: The problem is that the ones who have a problem in abiding by the law are probably not members of the Ontario Mortgage Brokers Association. At one time Leonard Rosenberg was president of the Ontario Mortgage Brokers Association. He quit the organization and then the whole Greymac, Seaway, Crown affair took place.

Mr. Breithaupt: Yet from what one reads or hears, his involvement as president of that association was a great boost to the membership. He was quite a driving force.

Mr. Ezrin: He was a good public relations man at the time.

Mr. Exton: Excellent.

Mr. Ezrin: That was about 15 years ago.

Mr. Renwick: I have to make one comment. If that route develops, and imperfect as it has been in the legal profession and in the other professional bodies, you have to distinguish between the public interest obligations and the private interests of the members.

With that comment, perhaps the minister could tell me whether or not he envisages an evolution or is the present format sort of etched in stone with the ministry? Is it realistic or unrealistic to proceed to a self-governing public interest body?

Hon. Mr. Elgie: We have always been responsive to discussions with the professional groups that want to explore the self-regulatory avenue. We have always insisted there be general support throughout the professional group for such a move, rather

than having it seen as something that is being imposed on the majority.

Certainly we are always amenable to those discussions. Look at the Toronto Stock Exchange and more recently the Toronto Futures Exchange, which is a self-regulatory body, and I guess most recently RIBO, the Registered Insurance Brokers of Ontario. We are clearly receptive to discussions on those. Whether or not it proceeds will depend upon a number of factors such as the general overall support, making sure it is in the public interest and making sure the terms of self-regulation meet everybody's needs. But we are amenable to those discussions.

Mr. Exton: This would also help to get those lawyers and accountants under our wing who hold themselves out not to be mortgage brokers but who actually deal in mortgages, even if it is only one mortgage a year.

Mr. Breithaupt: I do not think you could guarantee that in any practical way though, could you?

Mr. Exton: The only way it could be guaranteed is if we had somebody behind us saying that no mortgage transaction can be prepared by someone other than a member of the Ontario Mortgage Brokers Association who deals in mortgages.

Mr. Breithaupt: I doubt if you would find legislation that will do that.

Hon. Mr. Elgie: If I could just interrupt, we are dealing with more than just pure mortgage brokers here. We have real estate brokers who are mortgage brokers by the very nature of their legislative creation. We have lawyers who become mortgage brokers without going through the educational program and approval process you have in place. So a number of groups have to be considered besides the group that is before us today--the mortgage brokers who conduct their business in a pure way.

Mr. Renwick: I recognize there are always problems.

It seems to me that is a fruitful road to pursue and I would underline what you say. I made the assumption, in asking the question, that a goodly portion of the 500 members would be supportive of such an evolution.

Mr. Exton: Another thing that could happen is that we could reduce our fees to attract more people. We have to have the \$295 a year from each broker because we do not have the numbers we had before. If we had the number of people in the organization we feel we should have, which is all those acting as mortgage brokers, we could reduce the fee and attract more people.

Hon. Mr. Elgie: Then you would have to be thinking of adding errors and omissions insurance on top of the fee, I gather.

Mr. Exton: It is all included.

Mr. Renwick: From the point of view of protecting the

public, that is a better route to go than some arbitrary decision to exclude them from being members of boards of directors of trust companies. I just do not see that as viable public protection.

Mr. Boudria: I would just go back to the last point where you were talking about all mortgages to be arranged by mortgage brokers. There is an obvious drawback there. I am thinking of rural areas of the province where there are still a number of privately held mortgages. That is a custom that keeps on growing in rural areas of this province. A person retires, sells the farm and puts the money in mortgages. Surely one would not advocate that they cannot do those kinds of things on their own if they wish.

Mr. Exton: On the contrary, it is only because there is no regulation that all mortgage brokers be members of the Ontario Mortgage Brokers Association that we do not have as many rural brokers in the association. We have some very long-standing members who only deal in rural mortgages, but the number would increase if they had to be members of the association.

Mr. Boudria: Yes, but I am not talking about the brokers here. I thought I heard you say that all mortgages--

Interjections.

Mr. Exton: He is acting as a mortgage investor rather than a mortgage broker.

Mr. Ezrin: He is just investing his own funds. He is at no time acting as a broker.

Mr. Boudria: Okay. That would cover that.

A little earlier, you were talking about guaranteed investment certificates and how there really is not that much confusion right now on how it is. The minister will remember a case that was brought to the committee earlier during estimates--our acting chairman will remember it too--that of Real Estate Office CIOP Ltd. It was operating out of Ottawa selling something that looked an awful lot--

The Acting Chairman: Formerly out of Montreal.

Mr. Boudria: Yes, formerly out of Montreal.

11:30 a.m.

They were selling an investment contract that looked like a GIC and was sold in the same manner. It would say, "This certificate is guaranteed." That meant the owner of the company gave his personal guarantee it would work--that type of thing. If you looked at some of those things, you would have to say that sometimes there can be a lot of confusion between what is a guaranteed investment certificate and what is not.

Mr. Exton: Any time any money is being loaned by the public to a company, there should be some regulations attached to the document that is being handed over to the investor. One of those, obviously, is that the word "guaranteed" should not be used unless it is, in fact, guaranteed by Canada Deposit Insurance Corp.

Mr. Boudria: In other words, you are saying there should be some more standardized appearance to those contracts so that you could pick one up and just by the look of it tell its nature. Eventually, the public would be accustomed to the appearance. For example, it would be known one of those things is red in colour and therefore it is a GIC, but this one is blue--and I am just using colours as an example--and therefore it is not, it is something else.

Hon. Mr. Elgie: Make the guaranteed one blue and the one that is not guaranteed red. I like those colour symbols better.

Mr. Ezrin: Something that just has a big CDIC across the bottom, perhaps three inches high, would be enough.

Mr. Boudria: I am sorry, I missed that.

Mr. Ezrin: Something across the bottom of the certificate, say, "CDIC insured", in very big bold type. If there were a standardized method so that all the companies did it the same way, that would almost be enough.

Mr. Boudria: I also like the point you raise, that the word "guaranteed" be discouraged as much as possible wherever it is not CDIC covered because "guarantee" can mean a lot of things, but it is generally assumed by the not so sophisticated investor that it means just that, that it is covered by CDIC. In this particular case, I gather things are now firming up--and we are talking about a real estate company, Real Estate Office CIOP Ltd.--and most people are getting their money back.

The Acting Chairman: I understand the situation is well in hand.

Mr. Boudria: Which is good.

The Acting Chairman: A lot of people are getting their money back.

Mr. Boudria: I have had some of them write to me telling me they got some money back.

The Acting Chairman: I have one other question dealing with your brief, at page 3. I have a little bit of trouble with the second last paragraph which refers to corrective legislation having the ultimate effect of stifling the competition that has been created in the mortgage lending industry. I was wondering if you were relating that to the suggested prohibition of having mortgage brokers sit on the boards of loan and trust companies. If that is the case, I just cannot follow the leap in logic that takes place to the lessening of competition.

Mr. Ezrin: If you removed all the mortgage brokers from the boards of trust companies, you would lose a lot of strength on those boards and you would weaken the companies to the degree that you would have a much lesser number of companies around, especially in the small trust company area where you find the more innovative types of financing available.

The Acting Chairman: In the earlier part of your brief, you refer to the evolution of the mortgage broker, the fact that they sought out a separate pool of funds and transfused these funds into the mortgage market. I can see that having an effect on competition and on rates.

Mr. Ezrin: Some of these pools have all been to the small trust companies.

The Acting Chairman: They have all been to small trust companies?

Mr. Ezrin: Some of those have evolved into the small trust companies; some of the more sophisticated ones have become the small trust companies.

The Acting Chairman: And the small trust companies, if there was no mortgage broker on the board, would not be in the mortgage lending business; is that your point?

Mr. Ezrin: They would lose their ability to operate in many cases.

The Acting Chairman: I must confess that I find it a little bit difficult to follow, but in any event we will leave it there.

Mr. Exton: Let me explain. I do not think Seel Mortgage Investment Corp. would have evolved without the expertise of Eric Exton, who is now president of Seel Enterprises Ltd., the adviser company. I consider Seel Mortgage Investment Corp., with \$14 million in assets, a small mortgage investment corporation. That is the type of logic we were trying to bring out in our brief.

The Acting Chairman: In other words, you are arguing for a closer connection between trust and loan companies and mortgage brokers.

Mr. Exton: It could be we are asking for a close relationship without affecting the integrity of the directors and/or the mortgage brokers who act as directors on those trust and loan companies.

The Acting Chairman: Thank you. It has been a very interesting morning.

These are the only witnesses scheduled for this morning, but before the committee adjourns there are several matters that should be raised. The first one deals with the invitation to the treasurer of the Law Society of Upper Canada. Rendall Dick of the

Law Society of Upper Canada has advised us that the treasurer has prior commitments for this week and next. The question is, shall we attempt to schedule her appearance during the last week of the committee's deliberations, the week of March 5, following clause-by-clause study of the bill?

Mr. Breithaupt: I thought we were going to commit ourselves to clause-by-clause study and I recall that was going to be Monday, Tuesday and Wednesday of that week, was it not?

Mr. Renwick: March 5, 6 and 7 were the days, which are Monday, Tuesday and Wednesday.

The Acting Chairman: We have been advised she is prepared to make herself available during that week, so it is a question of whether we want her to appear then or not.

Mr. T. P. Reid: Would it be possible to start the clause-by-clause on Thursday? We have nothing scheduled for Thursday.

The Acting Chairman: There are no witnesses scheduled for Thursday of this week. The question is what to do with that day: cancel the meeting or proceed to other matters. As far as clause-by-clause goes, the Attorney General (Mr. McMurtry) is not available this week. Can we check on that?

The other thing about clause-by-clause consideration is that I, and possibly other members of the committee as well, have been receiving representations from interested parties. I have been telling them clause-by-clause is going to be on March 5, 6 and 7 as originally scheduled.

Mr. Renwick: Is the order the professional architects first, then the professional engineers, then the courts of justice? Is that the order of the bills?

The Acting Chairman: Bill 100 is on March 5. That is the Courts of Justice Act.

Mr. Renwick: That is on March 5, but the Attorney General is not available this Thursday to proceed with Bill 100.

The Acting Chairman: We will have to check to see whether he can be available for that.

Mr. Renwick: So it will be Bill 100 on Monday, and on Tuesday, Wednesday, and Thursday if necessary, the architects and engineers.

Mr. Breithaupt: That would depend on the other two bills. It may be the Courts of Justice Act will take a day and a half or whatever. I hope we could deal with most of the Courts of Justice Act on that Monday, but I recognize it could take Tuesday morning as well, I suppose.

Hon. Mr. Elgie: I have not talked to my staff on the matter, but I think we would value an opportunity to review the briefs that have been presented. We can have that opportunity as we go through the clause-by-clause of it, but we are in the committee's hands.

11:40 a.m.

Mr. Breithaupt: In dealing with these two things, perhaps the only practical way is to invite the treasurer of the law society, if she wishes, to make a written presentation to the committee if there are some particular points she wants to draw to our attention. I do not think it would be wise to have another presentation before us in that last week. It is important for our staff people to be able to sort out all the comments made by all the people. It has to come to some conclusion. I would suggest or request, if it might suit, written comments if there were any the Treasury would wish to present.

Second, I think on Thursday of this week it would be worth while for our research people at least to take us through and highlight the variety of briefs that are not otherwise going to be spoken to. I do not think it is necessary for all the ministry staff to be present, but it would at least remind us of the various points raised in case we did not get a chance otherwise to read them, and see if there are some points that would be useful. Perhaps if even the Thursday morning alone was spent on that, that might be sufficient. I think that would be some time spent that would be worth while, if that is the situation.

Mr. Renwick: Perhaps there could be a preliminary discussion as to the nature of our report or the form it is going to take.

Mr. Breithaupt: The major themes that are before us. That would be for Thursday.

The Acting Chairman: I think that is a valid proposal.

Mr. Cassidy: I am thinking in much the same way. It would be wrong to lose the day, if it is available, to try to recap what we have learned from the various sessions. This morning the briefs have tended to provoke some good discussion of some of the issues. It may be certain issues ought to have been raised but did not come in briefs. I think we need some process of discussion.

Frankly, I am a bit unhappy about the process by which the committee will move from here to a report. The ministry is strongly represented, but I think the legislative research staff has something of a confusing mandate. Because of other things, the chairman of the committee has had to be absent on a number of occasions, so it is not quite clear where the impetus will come from to say, "This is the direction in which we want to go and here is the time line for actually pulling a report together." Maybe the members have some comments about that.

I do not see us being in a position to complete a report by next week. Therefore, I think we need to be thinking in some ways about whether we are going to send the legislative researchers off to write a draft report. Are we then going to start to meet again in April and is the committee going to devote some time after the session begins to reviewing a draft report the legislative research staff has prepared in conjunction with the clerk or what? I am not sure what the process is at this point.

The Acting Chairman: I must say I am in somewhat the same position.

Mr. Renwick: I do not think we need to think we are confused. It is simply a question of not having devoted any particular thought to where we go. I stand to be corrected, but I assume the committee will not be meeting the week of Monday, March 12.

Mr. Boudria: Is that the March break?

Mr. Renwick: That is the March break. We will not be meeting then. I assume the week of March 5 is going to be totally taken up with the other three bills and perhaps a common comment from the treasurer of the Law Society of Upper Canada, if that were possible, which means we have this week, which is now settled, and that we will meet Thursday to review where we are on the trust company matter. So we have next week.

I take it that by the end of next week the research people ought to have a clear idea of what kind of report we are thinking about in relation to a draft. I assume Mr. Cassidy is correct, that the committee will have to meet after the House is back in session to review its work and finalize its report. Is that the way you see it, Mr. Breithaupt?

Mr. Breithaupt: I had thought that by the end of this week our research staff would be able to have for us, on a page for each of the recommendations in the report, a summary and the source reference of the various groups that were in favour or opposed or commented upon X, Y or Z, whatever it was. We will find that a number of recommendations may not have been referred to at all and may be fairly routine and can be agreed with or not fairly quickly.

I see our report as observing and summarizing, in effect, the general views on each of the 60 recommendations. Following that review, we would really be saying to the ministry: "Here are the comments made on your point, for example, of mortgage brokers not being on the board of a trust company. The committee agrees that is impractical for a variety of reasons." We would leave it at that. If the ministry chooses eventually to bring legislation before us, many of these things are going to be looked at again.

Mr. Renwick: You see us completing our report by the end of next week basically?

Mr. Breithaupt: I would think we would substantially have it in hand. If we have three days next week and perhaps have the Wednesday afternoon available to us, I would think we should be able to go through those summaries of 60 recommendations and say: "This one seems good. That one you should reconsider. This other is impractical from our sense of it."

Mr. Renwick: Let us set that as a goal.

The Acting Chairman: I have been advised that the original timetable was that we were to complete our session with witnesses this week, get on with the work that you had outlined next week, with next Tuesday sort of being the target date for the researchers to have their material available for us, but we will have to discuss with them whether that is possible.

Mr. Renwick: Let us agree to that general program. That would be fine.

Mr. Breithaupt: We may need a day or two later when we finally get the report. We may have to get together when the House comes back, on a Wednesday evening or whatever, and look at a summary, which I still think is going to be an advisory kind of report to the ministry. We are not writing legislation. We are going to be observing on some of the themes--

Mr. Renwick: We certainly cannot dictate to them, can we?

Mr. Breithaupt: --and whether we think it may be practical or not. We will give some educated guesses, and when legislation comes forward, we are going to do it all over again anyway.

Hon. Mr. Elgie: From my point of view, I think that is the desired route because the reality is that it is going to take a tremendous amount of drafting to put the proposals into legislative language. I personally would like to see something before the House during this next sitting.

Mr. Breithaupt: I expect our report will be a series of general observations on the 60-odd particular points because you are going to deal with it further and we are all going to be back dealing with particulars when legislation comes anyway.

Mr. J. A. Taylor: Mr. Chairman, on the other bills, will we be getting some forewarning about proposed legislative changes to some of those sections? I am thinking of the three bills that we are to consider clause by clause. When we were hearing from witnesses, there was an indication from the Attorney General (Mr. McMurtry), if I am not mistaken, that there were areas of substantial change; at least I would interpret it as substantial.

11:50 a.m.

Mr. Breithaupt: Like the industrial designer.

Mr. J. A. Taylor: That is right.

The Acting Chairman: In response to that, I have been advised the Attorney General's people are still meeting with the various interest groups in order to sort out some of the problems. They should have a list of proposed amendments ready for next Tuesday.

Mr. J. A. Taylor: What troubles me is--

Mr. Renwick: They are going to know a great deal about interior designing by the time they are finished.

The Acting Chairman: I am afraid they will, judging from the presentations that are made to me.

Mr. Renwick: Is there any possibility we could be given some kind of assurance we are not going to be back into a dog fight on that issue in the bill? Is there some way we can see the amendments in advance of the actual hearings?

The Acting Chairman: The amendments should be ready by next Tuesday, or may be, and that will give you a few days' advance notice.

Mr. J. A. Taylor: By next Tuesday.

The Acting Chairman: They may be ready. They are working on them now.

Mr. J. A. Taylor: That is fine, if that is so. I have no quarrel with that, as long as there is an indication that some progress is being made. I would hate to be faced at the very last moment with a fundamental restatement of what is there, and no meaningful accommodation being made to some of the legitimate concerns that were expressed.

Mr. Renwick: I think we all felt a sense of legitimacy about some of the points that were being made, and I would hate to have to rehash it all.

The Acting Chairman: I rather hoped some accommodation would be made with some of the groups.

Mr. Renwick: We have quite a volume of amendments from the ministry. Is it possible the ministry can reprint the bills with those amendments, so we will not have to laboriously go through the process of moving each and every one of them?

The Acting Chairman: The clerk can check with the minister to see whether that can be done.

Mr. Renwick: Because you lose sight of what the bill is about by the time you have done the minutiae.

Mr. J. A. Taylor: That was the issue I wanted to raise, so we are not stuck at the last moment with a standoff on a lot of these things and we do not know what accommodation has been made.

The Acting Chairman: By the end of next week we should be in the position, except for some finishing review possibly when the House is in session, to give our response to the white paper.

Mr. J. A. Taylor: The other point I would like to raise is the procedure on clause-by-clause. Are we going to hear more from people who are interested in a particular section, or are they going to be here to speak only if invited to speak on a section? What posture is the chairman going to take?

The Acting Chairman: I do not know what posture the chairman will take. I know what posture I would take.

I think all the groups have had an opportunity to present their views and their concerns fully here in public hearings and every member here has had individual concerns brought to his or her attention. It would burden the process if we were to hear from delegations on every clause as we proceeded. I think we should proceed on the basis that when we start clause-by-clause, it is strictly a committee concern, and we go into each clause as we see it as individual members.

Mr. Breithaupt: I suppose if a particular organization is interested in a certain section and wants it raised, it will pass a message to one of the members to ask that it be done.

Mr. Renwick: I do not have a problem with that.

Mr. Breithaupt: That is not a problem, and if other groups are here, it may be the wish of the committee to invite a comment on a certain section, but I think we should have it as a general rule that we will not be hearing from every single group once again. It would be by the invitation of the chairman if there is a particularly difficult point about which the view of an expert might be helpful.

The Acting Chairman: I did not want to see the process complicated by having another--

Mr. Renwick: I would like to express it this way. This is what I would like to see done.

I have no problem with the general principle, but I do not think we should translate that into a straitjacket. That is why I think there has to be some residual discretion in the chairperson, if it is necessary to ask for a specific comment on some matter, that he be free to do so from those members of the interested public who happen to be here and who perhaps are vitally concerned about it. Within that framework, I have no problem with the general principle.

The Acting Chairman: My opinions were expressed as a member of the committee, and there will be another chairman here when we come to the clause-by-clause debate.

Mr. Renwick: He is extremely flexible.

The Acting Chairman: There is one other matter I would like to raise before we adjourn.

Sidney Linden, the public complaints commissioner, has requested a meeting with the committee and an informal meeting has been tentatively scheduled for next Tuesday, at two o'clock, with the formal sessions on the loan and trust review resuming at three or 3:30 p.m..

Mr. Renwick: Is he going to come here?

The Acting Chairman: He is going to come here next Tuesday.

Mr. Renwick: Has he given any indication of why he has requested an audience with us?

The Acting Chairman: It is not related to the loan and trust process we are going through. It is more to acquaint the committee, in an informal sort of way, with what his office has been doing.

Mr. Renwick: Could I suggest politely that we ask him to defer that until later on? We have quite a plateful in front of us if we are going to get through these three bills and wrap up this trust company thing.

The Acting Chairman: If the committee agrees, this can be deferred until some time after the House resumes.

Hon. Mr. Elgie: Why not have him come this Thursday afternoon?

Mr. Boudria: Half the members here now are not even regular members of the justice committee.

Mr. Breithaupt: With the justice committee getting into a regular pattern of meetings and probably having some time in the first week or two that will not be taken up with the duties of the committee in either estimates or legislation, we could quite conveniently have that presentation made on a Thursday afternoon or Friday morning, at what would be a normally scheduled time for the committee. It would be better to try to do that.

Let Mr. Linden know we are anxious to meet with him, but he should meet with the justice committee in its normal membership and in the first two weeks of the session.

Mr. Eves: I would agree with the comments made by both Mr. Renwick and Mr. Breithaupt. That is a very reasonable and practical proposal.

The Acting Chairman: The decision appearing to be unanimous, we will advise Mr. Linden.

Hon. Mr. Elgie: Regarding the loan and trust review next week, I wanted to sort out for my staff and myself what the committee sees as our role next week. For instance, as we consider

the staff collection of points of view and our own points of view on each of the proposals, do you envisage the ministry and perhaps some of the authors commenting on each step or would you like us to prepare our own document for the committee?

Mr. Renwick: In the give and take of discussion--

Hon. Mr. Elgie: I agree with that. I just had the impression that perhaps you saw this as the committee's role, separate and distinct from any ministry contribution.

Mr. Renwick: No.

Mr. Breithaupt: I would just as soon see members of the staff here, and when we get to recommendation 14 and we say, "We do not think it is a great idea," they are going to say, "I guess we will have to think about it," or whatever; or if you feel very strongly, we may well see it in legislation; who knows?

Hon. Mr. Elgie: Okay. I just wanted to clarify what you wanted.

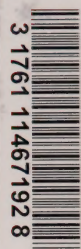
Mr. Breithaupt: I do not think a separate paper or whatever is needed.

Mr. Renwick: We have been doing very well in getting started on time, but it is absolutely essential that we on this committee get into a real habit of starting at starting time. We were a little late this morning. It is easy to get sloppy about these things.

The committee recessed at 12:01 p.m.

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